

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,)	File No. 21-cr-108
)	(PAM/TNL)
Plaintiff,)	
)	
v.)	
)	
Tou Thao(2),)	Courtroom 7D
J. Alexander Kueng(3), and)	St. Paul, Minnesota
Thomas Kiernan Lane(4),)	Tuesday, February 22, 2022
)	9:44 a.m.
Defendants.)	

BEFORE THE HONORABLE PAUL A. MAGNUSON
UNITED STATES DISTRICT COURT SENIOR JUDGE

(JURY TRIAL PROCEEDINGS - VOLUME XX)

Proceedings recorded by mechanical stenography;
transcript produced by computer.

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P R O C E E D I N G S

IN OPEN COURT

(JURY PRESENT)

(Defendants present)

THE COURT: You may be seated. Good morning, everyone, and welcome back.

Please be advised that your colleague, Juror No. 52, has been excused from further service with respect to this case.

I'm going to ask that, first of all, Juror No. 60, if you would slide to the far end over there, I'd appreciate it. Thank you. We had a little conversation just as she was coming in about being alone in the front row.

And then with that, Juror Number 70 -- let's see. I need to check. 69. Okay. Juror No. 69, if you would take the next seat over there.

Juror No. 70, if you'd take the first seat there.

And then the two of you back in the amen corner, if you want to come up a row, why, you are welcome to do so.

Okay. And incidentally, members of the jury, please don't speculate or worry about why Juror No. 52 is just not with us. It was a matter that it was appropriate that she be excused from further service.

And with that, we've heard all the testimony we're going to hear in the case and we are now prepared for

1 summation.

2 I will recognize the government for summation.

3 Ms. Sertich.

4 MS. SERTICH: May it please the court --

5 THE COURT: Proceed.

6 MS. SERTICH: -- counsel, members of the jury.

7 In their custody. In their care. "Please, the
8 knee on my neck." "I'm through." "I can't breathe,
9 officer." "Please, man, somebody help me." "I can't
10 breathe." "They're going to kill me." "They will kill me."
11 "I can't breathe." And then one last time, "Please, I
12 really can't breathe."

13 By the time George Floyd gasped out his final
14 words on May 25th, 2020, Officer Chauvin had already been
15 kneeling on him, pressing his knee into Mr. Floyd's neck for
16 four minutes and 40 seconds. Make no mistake, this is a
17 crime.

18 By that time Defendant Thao had stood just a few
19 feet away for four minutes and 40 seconds staring right at
20 Officer Chauvin as he slowly pressed the air out of the
21 handcuffed and compliant man lying facedown on the ground
22 begging for his life.

23 By that time Defendant Thao had ignored Mr. Floyd,
24 who said 23 times while restrained on the ground, "I can't
25 breathe," begging, "Please," 16 times.

1 By that time Defendant Thao had also ignored the
2 pleas of a 61-year-old man in -- a 61-year-old man, a man in
3 his 30s, two teenage girls, and a 9-year-old girl, all of
4 who could see the obvious, that a man was dying right before
5 their eyes.

6 By the time George Floyd spoke his last words,
7 Defendant Thao had done nothing for four minutes and
8 40 seconds. Actually, that's not quite true. He had done
9 nothing to stop the crime happening in front of him, but he
10 hadn't actually done nothing. He had chosen to argue with
11 and mock the people who were begging him to intervene.
12 "This is why you don't do drugs, kids." And "He's talking,
13 so he's fine."

14 He had decided that, rather than tapping Chauvin
15 on the shoulder or shoving him off of George Floyd or even
16 just telling him, "That's enough, I got this," he would
17 argue with and belittle the people who were trying to get
18 him to do what the law, not to mention human decency and
19 common sense, required him to do, to stop the slow-motion
20 killing unfolding right in front of him.

21 We know Thao recognized something was wrong
22 because he upped the EMS call to a Code 3, but then never
23 told dispatch the important information that could have sent
24 fire rescue to the scene in two minutes, that there was a
25 person having trouble breathing. He never did update that

1 information. None of the officers did.

2 That was Defendant Thao. By the time George Floyd
3 said his final words, Defendant Kueng had been crouching
4 shoulder to shoulder with Officer Chauvin for those same
5 four minutes and 40 seconds.

6 By that time Defendant Kueng had also ignored all
7 of those pleas. He had also chosen not to tap Officer
8 Chauvin on the shoulder or ask him to move off of George
9 Floyd's neck. But he, too, had not actually done nothing.
10 Nothing would have been bad enough.

11 Defendant Kueng had spent that time pressing
12 George Floyd's handcuffed wrist into his lower back while
13 Officer Chauvin pulled the fingers of that same hand right
14 in front of Kueng.

15 Defendant Kueng pressed George Floyd further into
16 the pavement and made it that much harder for Mr. Floyd to
17 reposition himself or to draw enough air into his lungs.
18 Kueng held that position for more than eight minutes.

19 And as the terrified bystanders begged and
20 pleaded, cried out repeatedly for any one of the defendants
21 to do something, anything, Defendant Kueng instead casually
22 picked gravel out of the tire in front of him and laughed
23 with Officer Chauvin, who mocked --

24 MR. PLUNKETT: Misstates the evidence.

25 MS. SERTICH: -- George Floyd's pleas by saying it

1 took George Floyd --

2 THE COURT: This is final argument. Overruled.

3 Go ahead.

4 MS. SERTICH: -- mocked George Floyd's pleas by
5 saying that it took George Floyd a heck of a lot of oxygen
6 to keep talking. As he told you, a little moment of levity
7 as his actions literally pressed the remaining oxygen out of
8 George Floyd's body and carbon dioxide caused George Floyd's
9 organs to fail.

10 And how about Defendant Lane? By that moment,
11 when George Floyd said his final words, Defendant Lane had
12 also pushed George Floyd's legs down, on and off, but even
13 up to five minutes into the restraint and crouched just feet
14 away from Officer Chauvin, choosing not to stop the horror
15 unfolding right under his nose.

16 And you know that he affirmatively chose not to do
17 anything because you know, based on what he said out loud
18 and based on his training, what was going on in his head at
19 that moment. He was thinking that George Floyd was in
20 distress, maybe he had excited delirium, and that if they
21 didn't roll George Floyd over onto his side, he could die.
22 You know what was going through his head because he said
23 bits and pieces of what he was thinking out loud. "Roll him
24 on his side." "I just worry about the excited delirium."

25 But even though he recognized and even gave voice

1 to the mortal danger George Floyd was in, he did nothing to
2 give Mr. Floyd the medical aid he knew Mr. Floyd so
3 desperately needed, medical care that he had the ability,
4 the authority, and the legal obligation to provide.

5 And then even at that point, when George Floyd
6 forced out his final words, the defendants were still only
7 halfway through their crime. Even after the moment when
8 George Floyd moaned, "Please, I really can't breathe," these
9 three defendants stood by and watched their fellow officer
10 press the life out of him for another full minute and then
11 another and then another and then another, for another
12 nearly five minutes.

13 They sat by and chose to do nothing while George
14 Floyd stopped moving, lost consciousness. They plainly knew
15 of Mr. Floyd's worsening condition, not only from their
16 front row seats on top of and right next to Mr. Floyd, but
17 also from the frustrated calls of the witnesses.

18 Defendant Lane continued to voice a concern,
19 agreeing with Bystander Alyssa Funari that George Floyd was
20 passing out and asked again, "Should we roll him on his
21 side?" and asked Defendant Kueng if he could find a pulse.

22 Defendant Kueng, still pressing George Floyd's
23 wrist into his back and holding George Floyd's buttocks and
24 legs down with his knee, checked for George Floyd's pulse
25 twice and said twice that he couldn't find one.

1 As you heard from emergency room physician
2 Dr. Bebarta, if you don't think you have a pulse, you assume
3 you don't have a pulse. He said if they don't have a pulse
4 and they're not moving or not breathing, they are probably
5 pulseless. It's a medical emergency.

6 Thao himself testified that at that point every
7 second counts and that even a minute of delay can diminish
8 the likelihood of survival.

9 In response to this obvious emergency, Defendant
10 Thao stood there and stared directly at George Floyd's
11 increasingly lifeless body for another two full minutes
12 after Mr. Floyd stopped speaking.

13 He then -- watch the videos; you will see this for
14 yourselves, particularly Darnella Frazier's video,
15 Exhibit 17, and Genevieve Hansen's video, Exhibit 19 -- he
16 then stood in the way of the bystanders' view of what was
17 happening to George Floyd, blocking their ability to provide
18 aid or see what was happening to him. He taunted them and
19 ignored them when they addressed him by name and asked him
20 to give George Floyd aid or get his fellow officers to do
21 so.

22 But, as we've heard so often throughout this
23 trial, Kueng and Lane were new officers. To those who have
24 suggested that it is just too much to expect of junior
25 officers that they stand up to Chauvin and suggest to him

1 that he stop killing a man right in front of them, I have
2 this to say: Charles McMillian, Alyssa Funari, Genevieve
3 Hansen, Donald Williams, Darnella Frazier, and her
4 nine-year-old cousin.

5 What the defense has suggested to you throughout
6 this trial is that it is just too much to expect a trained
7 officer with nine years experience under his belt and two
8 officers who just went through a year and a half of
9 training, one of whom had previous law enforcement
10 experience, to so much as say to Officer Chauvin, "Hey, man,
11 get your knee off his neck" or "That's enough, let up," or
12 even, "Sir, check the carotid pulse."

13 The defense wants you to accept that it is too
14 much to ask of them to say those things because in Thao's
15 case the defense position is it wasn't his job. You have
16 heard law enforcement witness after witness reject that
17 idea. It is every officer's job on scene. They want you to
18 accept that in Kueng and Lane's case, it's too much to
19 expect them to do their duty and risk the disapproval of a
20 more experienced officer.

21 Let me be clear about this. You do not have to
22 accept Kueng 's assertion that he believed Chauvin could
23 fire him. Two other MPD officers have testified that field
24 training officers, let alone field training officers who are
25 no longer supervising a trainee, cannot unilaterally fire

1 officers.

2 But even if you credit his concern, let's be clear
3 about what this means. The defense's position is that it is
4 just too much to expect police officers to do their duty and
5 attempt to aid a man they placed in their custody when it
6 means risking the disapproval of a fellow officer, even when
7 the result is that someone dies. That is what the position
8 boils down to, and MPD policy and common sense will tell you
9 to reject that.

10 They want you to accept that it is too much to ask
11 of them to say those things, even though it was not too much
12 for those regular people walking by, who saw exactly what
13 was happening, who recognized the direness of the situation
14 and who asked, then pleaded, then begged, then demanded that
15 the defendants do something, anything, to save George
16 Floyd's life.

17 Those civilians didn't have a badge. They didn't
18 have other officers who could back them up. Each civilian
19 knew when they stepped forward to question the police and
20 particularly when Defendant Thao gruffly ordered them not to
21 get involved, they knew these officers they were watching
22 had more power than they did, more authority than they did,
23 and could cause trouble for them.

24 But they still insisted, even though they, unlike
25 the defendants, had no affirmative duty to help George

1 Floyd; even though they, unlike the defendants, had never
2 sworn to keep the public safe; even though they, unlike the
3 defendants, were not trained as to exactly how to respond to
4 a situation like this; even though they, unlike the
5 defendants, were being ordered away from George Floyd; even
6 though they, unlike the defendants, were threatened with
7 Mace; even though they had no power --

8 MR. GRAY: Judge, I object to this. Threatened by
9 the defendants with Mace. My client didn't. She should
10 particularize the defendants.

11 THE COURT: Sustained.

12 MR. GRAY: Move that the jury be told to disregard
13 that.

14 THE COURT: Disregard it.

15 MS. SERTICH: Even though they had no power, no
16 authority, no obligation, they knew they had to do
17 something.

18 Darnella Frazier's little cousin was born right
19 around the time Thao took his oath and became a police
20 officer.

21 MR. ROBERT PAULE: Your Honor, I'd object to this.
22 She is using a nontestifying witness to testify and drawing
23 on the jury's emotion by consistently referring to a
24 nine-year-old child.

25 THE COURT: Sustained.

1 MS. SERTICH: May I refer to her statements on the
2 video, Your Honor, the evidence on the record?

3 MR. ROBERT PAULE: Your Honor, I would ask that
4 that last portion of Ms. Sertich's argument be stricken as
5 improper.

6 THE COURT: Yeah, counsel, I just don't think that
7 the reference to that individual is appropriate or we don't
8 need that in the argument.

9 MS. SERTICH: Not her statements in the video?

10 THE COURT: That's right.

11 MS. SERTICH: Instead, other than Lane asking a
12 few questions, questions that show he knew there was a
13 serious problem, these defendants did nothing to stop or
14 attempt to stop Derek Chauvin and none of them did a thing
15 to help George Floyd until after the ambulance arrived and
16 Mr. Floyd had been in cardiac arrest for more than five
17 minutes.

18 What the bystanders didn't know, but what you have
19 seen and heard, is that the officers were actually listening
20 to them, that as soon as Alyssa Funari said she thought
21 George Floyd was passing out, Defendant Lane said, "Yeah, I
22 think he's passing out," that when Genevieve Hansen and
23 Donald Williams demanded the officers take George Floyd's
24 pulse, Defendant Kueng immediately checked for a pulse and
25 told Chauvin and Lane he couldn't find one.

1 What the bystanders could never have imagined, of
2 course, is that the officers knew this, knew Mr. Floyd had
3 passed out, couldn't find Mr. Floyd's pulse, and would
4 choose to do nothing about it.

5 As a result of the officers' actions and inaction,
6 exactly what the bystanders warned them about happened, a
7 human being, someone's son, father, friend, significant
8 other, George Perry Floyd, Jr. --

9 MR. ROBERT PAULE: Your Honor, I'd object to this.
10 There's been no evidence elicited as to any of those things
11 that Ms. Sertich just said. She's also appealing to the
12 jurors' prejudice by using the phrase "say his name."
13 Totally inappropriate.

14 MS. SERTICH: Your Honor, there's evidence in the
15 record of him calling out to these people that I mentioned
16 while he's on the ground on the video that is admitted as
17 evidence.

18 MR. ROBERT PAULE: Your Honor, that is not
19 accurate. It misstates the evidence.

20 THE COURT: The jury will recall the evidence that
21 was given with respect to Mr. Floyd's comments, and I think
22 that will end that matter.

23 Continue.

24 MS. SERTICH: As a result of this action and
25 inaction, George Perry Floyd Jr. died a slow and tortuous

1 death over the course of nine minutes right there in front
2 of these defendants, underneath their knees, handcuffed,
3 unarmed, unresisting in broad daylight on a public street.

4 Now, as you heard from Judge Magnuson about a
5 month ago now, the indictment in this case contains two
6 counts, both of which charge deprivation of rights under
7 color of law in a slightly different way.

8 Defendants Thao and Kueng are charged in Count 2
9 with depriving Mr. Floyd's rights by failing to intervene to
10 stop Mr. Chauvin's use of unreasonable force. And all three
11 defendants, Thao, Kueng, and Lane, are charged in Count 3
12 with depriving Mr. Floyd's rights through deliberate
13 indifference to his medical needs, which means that they
14 purposefully failed to provide medical aid to Mr. Floyd
15 while he was in their custody and care.

16 I'm going to go through the law of both counts
17 with you now and summarize the evidence that proves beyond a
18 reasonable doubt, and then some, that these defendants are
19 guilty.

20 I'll put this law up on the screen for you now as
21 we go through, but you will see these same instructions from
22 Judge Magnuson. You will get a copy of the instructions to
23 use during your deliberations. You will be able to go back
24 to them and read them yourselves.

25 For Count 2, failure to intervene, there are four

1 elements, four things the government must prove beyond a
2 reasonable doubt:

3 First, that the defendants deprived George Floyd
4 of a right, privilege, or immunity secured by the
5 Constitution or laws of the United States by failing to
6 intervene to stop Chauvin from using unreasonable force.

7 Second, that the defendants acted willfully, that
8 is, the defendants committed such act with a bad purpose or
9 improper motive to disobey or disregard the law,
10 specifically intending to deprive the person of that right.

11 The third element of Count 2 that the government
12 must prove is that the defendants acted under color of law,
13 meaning that at the time of the offense the defendants were
14 acting in their official capacity, in this case as officers
15 with the Minneapolis Police Department.

16 And fourth and finally, the government must prove
17 that bodily injury and/or death was a result of the
18 defendants' conduct.

19 I'm going to go through each of these four
20 elements with you, and I'm actually just going to take them
21 slightly out of order to knock out the easiest one first and
22 that's element three, that the defendants were acting under
23 color of law, acting in their official capacity at the time
24 of the crime.

25 This element is not in dispute. The parties have

1 stipulated to this fact. You heard my colleague, Ms. Bell,
2 read that stipulation into the record, and it is
3 Government's Exhibit 105.

4 And, of course, you saw that all the defendants
5 were in uniform and working as Minneapolis Police Department
6 officers that day. Mr. Floyd recognized that, calling Kueng
7 and Lane "Mr. Officer" more than 30 times during their
8 interaction.

9 The first element -- or the third element, the
10 first we're talking about, is met. We can check that one
11 off. This element is the same for Count 3. We'll talk
12 about that later.

13 So then we can go back to the first element of
14 Count 2, where you must determine whether the defendants
15 deprived George Floyd of a constitutional right by failing
16 to intervene.

17 Judge Magnuson will tell you that every person in
18 the United States has the right to be free from an officer
19 using unreasonable force against him. And crucially for
20 this case, this right is violated not only by an officer who
21 personally uses unreasonable force, but also by any officer
22 who has knowledge of another officer's unreasonable force,
23 has the opportunity to intervene to stop it, and chooses not
24 to do that. This element actually has four subelements to
25 prove, so I'm going to walk through each one to demonstrate

1 that the government has proven this element.

2 So the first part of this determination that you
3 see there next to the letter "A" is whether Officer Chauvin
4 used unreasonable force. That factor wasn't seriously
5 questioned in this trial, so I won't spend much time on it.

6 You've learned that Officer Chauvin, like any
7 other officer, was permitted to use only that amount of
8 force that was reasonably necessary to control his arrestee.

9 Everyone who testified on this point, Inspector
10 and former commander of training Katie Blackwell, medical
11 support coordinator Officer Nicole Mackenzie, expert witness
12 Chief Timothy Longo, even defense expert Steve Ijames agreed
13 that there was a period of time while Mr. Floyd was still
14 conscious that Officer Chauvin's force was unreasonable and
15 that it continued until after the ambulance arrived.

16 According to defense expert Steve Ijames, it was
17 obvious beyond question. He had never seen anything like it
18 in any department, and George Floyd was killed as a result
19 of this unreasonable use of force.

20 The first part of this constitutional violation
21 has been proven beyond a reasonable doubt.

22 The second part of the constitutional violation --
23 that's "B" on the screen -- requires the government to prove
24 that Defendants Thao and Kueng observed or otherwise knew
25 that Chauvin was using unreasonable force. The answer to

1 this question is yes as to both defendants.

2 In terms of observing the force, we've already
3 discussed the front row seats that Defendants Thao and Kueng
4 had to Chauvin's obviously unreasonable force.

5 When Thao was on the stand, the defense played
6 only parts of his body-worn camera footage, up until about
7 8:21 p.m. and then they skipped ahead until about 8:26 p.m.,
8 avoiding more than five minutes. You will have the video
9 showing these missing minutes, the video we watched over a
10 month ago now, as well as all the video --

11 MR. ROBERT PAULE: Your Honor, I'd object to that
12 last comment as burden shifting and improper.

13 THE COURT: Oh, I'll overrule. It was over a
14 month ago. Go ahead.

15 MS. SERTICH: -- as well as all the video admitted
16 as exhibits in this trial. They'll all be available to you
17 in the deliberation room. Review the videos as much and as
18 often as you need to do, because they show and tell what
19 happened better than any testimony.

20 Review Defendant Thao's body-worn camera video,
21 Exhibit 9; review the video recorded by Darnella Frazier,
22 Exhibit 17; the Milestone video from across the street,
23 Exhibit 14. Watch how for six whole minutes Thao stands
24 right there next to his partners staring at Chauvin while
25 he --

1 MR. ROBERT PAULE: I'd object to this as
2 misstating the evidence.

3 THE COURT: It's overruled.

4 MS. SERTICH: He's staring at Chauvin while he
5 presses on George Floyd with his knees. During that time
6 Thao stood staring at Chauvin while Chauvin pressed his left
7 knee into Mr. Floyd's neck and Mr. Floyd said he couldn't
8 breathe because of the knee on his neck and then stopped
9 speaking, stopped moving, and lost consciousness.

10 Two and a half minutes into the restraint Thao
11 questioned Mr. Floyd directly. "What are you on?" George
12 Floyd responded, "I can't breathe. Please, a knee on my
13 neck." Charles McMillian told Mr. Floyd right then to get
14 up and get in the car. Mr. Floyd responded, "I will. I
15 can't move."

16 Over six minutes into the restraint, Thao stepped
17 forward and faced the bystanders and from then up until the
18 time the EMS arrived this group of concerned citizens
19 provided Thao and Kueng with play-by-play commentary on what
20 Officer Chauvin was doing to George Floyd. They said:
21 "You're stopping his breathing." "Look at him." "Get off
22 of him." "He cannot breathe." "He's not responsive right
23 now." "Is he breathing right now?" "You call what he's
24 doing okay?" "He's not moving." "He has not moved not one
25 time." "Did they just kill him?" "Check his pulse."

1 "Check the pulse." "Do they have a pulse?"

2 Eight minutes into the restraint Alyssa Funari
3 cries, "You're still on him." And then "You stand by your
4 coworkers, right?" Those are your partners, right?" At
5 about the same time Donald Williams tells Chauvin to get off
6 of --

7 MR. ROBERT PAULE: Objection. This violates the
8 confrontation clause as Mr. Williams did not testify. It's
9 being offered for the truth of the matter asserted and is
10 improper.

11 THE COURT: That I sustain. He did not testify.

12 MS. SERTICH: Your Honor, I'm just repeating his
13 words that are in evidence on the video.

14 MR. ROBERT PAULE: Your Honor --

15 THE COURT: It's overruled.

16 MR. ROBERT PAULE: Your Honor, I would ask that
17 the jury be instructed to disregard Ms. Sertich's last
18 statement.

19 THE COURT: I sustain that objection. The jury
20 will disregard.

21 MS. SERTICH: Thao, throughout this latter part of
22 the restraint, and you can go back and listen to Donald
23 Williams' words on those videos --

24 MR. ROBERT PAULE: Your Honor, I object. This is
25 a repeated objection. It's totally inappropriate and it's

1 intentional, given the fact it was just repeated after the
2 court ordered her to not do that.

3 MS. SERTICH: It goes to Mr. Thao's knowledge,
4 Your Honor, not to the truth of the matter.

5 THE COURT: Okay. Proceed.

6 MS. SERTICH: Thao, throughout this latter part of
7 the restraint, heard them loud and clear. He responded with
8 taunts and tried to hide the situation from their view.

9 During this time Kueng was shoulder to shoulder
10 with Chauvin and had a close-up view of Chauvin's knee on
11 Mr. Floyd's neck. You can see it in Kueng's body-worn
12 camera video. I'll play just --

13 (Video recording played)

14 That clip is from 30 seconds after Lane said
15 Mr. Floyd had passed out.

16 But you, as jurors, can also use your common sense
17 to determine that Kueng could see Chauvin's left knee.
18 While he was sitting at Mr. Floyd's waistline right next to
19 Officer Chauvin, Mr. Floyd's head was no more than a few
20 feet away from him.

21 In terms of his ability to observe the
22 unreasonable force, he heard Mr. Floyd say he couldn't
23 breathe because of the knee on his neck. He could hear and
24 see and feel that Mr. Floyd stopped talking and stopped
25 moving.

1 He told Lane to just leave him when Lane asked
2 about rolling Mr. Floyd on his side. He heard Lane say that
3 Mr. Floyd had lost consciousness and asked whether Mr. Floyd
4 had a pulse. He twice checked for Mr. Floyd's pulse and
5 said he couldn't find one.

6 And, of course, the bystanders were also
7 indirectly telling Kueng what was happening. Now, with
8 respect to those bystanders, Kueng testified he heard noise.
9 And when asked if he heard words, he claims he heard
10 expletives.

11 Watch his body-worn camera video, Exhibit 7;
12 review the transcript, Exhibit 7-A. As soon as Alyssa
13 Funari yelled, "He's about to pass out," Lane responded,
14 "Yeah, he's passing out." And, again, when off-duty
15 firefighter Genevieve Hansen started demanding a pulse
16 check, Kueng checked for a pulse.

17 Watch what he did at the time, not what he said on
18 the stand. Listen to the video. Kueng heard the
19 bystanders, and that's another way he had reason to know
20 about Chauvin's unreasonable force.

21 So the second consideration for failure to
22 intervene, that Defendants Thao and Kueng observed or
23 otherwise knew that unreasonable force was being used, has
24 been met.

25 The third part of this constitutional violation --

1 that's "C" up on the screen -- asks whether Defendants Thao
2 and Kueng had the opportunity and means to intervene to stop
3 the unreasonable force.

4 They had the opportunity and the means. They were
5 police officers with guns and badges, specialized training,
6 and fellow officers and supervisors that they could call on
7 the radio. They could speak. They could ask questions.

8 This wasn't a split second use of force, like a
9 gunshot wound or a kick to the head, where the opportunity
10 to intervene in the force is over before onlooking officers
11 have a chance to jump in and make things right. Not split
12 second. Not 30 seconds. Not a minute. Several minutes,
13 569 seconds.

14 MR. ROBERT PAULE: Your Honor, I'd object. This
15 violates *Graham vs. Connor*.

16 THE COURT: It's overruled. Final argument. You
17 may argue.

18 MS. SERTICH: Defendants Thao and Kueng watched
19 and listened to George Floyd's condition slowly deteriorate
20 while Derek Chauvin pressed his knee into George Floyd's
21 neck, and they were right there next to him, within speaking
22 distance, within touching distance, within distance to tap
23 Mr. Chauvin's shoulder and tell him, "He's not okay, we need
24 to move him now." They had the ability, authority,
25 opportunity, means, and duty to intervene for more than nine

1 minutes.

2 And while we're talking about the opportunity to
3 intervene, I want to be clear about something. You've heard
4 the defense suggest over and over during this trial that
5 those bystanders are somehow to blame because they made the
6 scene unsafe. As Genevieve Hansen testified, the only
7 person that scene was unsafe for was George Floyd.

8 Every day in the United States hundreds of
9 thousands of police officers and even hundreds of officers
10 working just for the Minneapolis Police Department go to
11 work and act with courage. It is incredibly important work.
12 What could be more important than protecting our community
13 from possible harms?

14 Officers literally run into danger, into
15 situations with active shooters, into violent domestic
16 disputes, into people who want to cause them harm. They
17 perform jobs under incredible stress. They act with almost
18 unbelievable courage. This case isn't about those officers.

19 In this case these bystanders saw a violent crime
20 being committed by a police officer. They begged police
21 officers to do something about it, which is a normal
22 reaction to seeing a crime. They are not yelling threats.
23 They're yelling: "He's not talking." "He's passing out."
24 "Check his pulse."

25 And the police officers stood by and watched doing

1 nothing as the perpetrator of the crime, who happened to be
2 a fellow officer, pressed a knee into a man's neck until
3 slowly, minutes later, he died.

4 And even while watching a police officer kill a
5 man in front of them, these good Samaritans stayed
6 non-violent and compliant. It seems the defense wants you
7 to think that the bystanders should have seen what they saw,
8 done nothing, and walked away.

9 That can't be the right answer, not in the United
10 States. In this country we are not prohibited from
11 questioning the police or other public officials. Each
12 citizen has the right to do so. Nobody is above the law.

13 Maybe the reason the defense wants to suggest that
14 the bystanders should have looked the other way is because
15 that's what each of the defendants did.

16 MR. PLUNKETT: Burden shifting. Objection.

17 MR. GRAY: Objection.

18 THE COURT: I sustain the objection.

19 MS. SERTICH: Equally nonsensical is the
20 defendants' claim that the group of bystanders was somehow
21 threatening to --

22 MR. PLUNKETT: Objection. Disparaging.

23 MR. GRAY: Objection, Your Honor. My client never
24 claimed that. She says "defendants." My client is not even
25 involved in this.

1 THE COURT: I think it's repetitious, but I'll let
2 you continue, counsel.

3 MS. SERTICH: We're talking about a group of
4 unarmed, upset, but well-behaved bystanders. We're talking
5 about minors, a sworn firefighter, and a 61-year-old man, a
6 no doubt vocal but compliant man, who literally crossed his
7 hands in front of him when he stepped off of the curb, who
8 pulled others back onto the curb at Defendant Thao's
9 direction.

10 You heard from a number of law enforcement
11 officers in this case, Inspector Blackwell and Lieutenant
12 Zimmerman to name just two, that the bystanders were not a
13 threat. Inspector Blackwell noted they were complying with
14 orders to back up onto the sidewalk. Lieutenant Zimmerman
15 told you that, based on the hundreds and hundreds of crime
16 scenes he's been to, these bystanders were actually trying
17 to help Mr. Floyd to be able to breathe with their
18 suggestions. Even defense expert Ijames told you the
19 officers on scene did not appear to be threatened by these
20 bystanders.

21 You know in a bunch of ways that the defendants
22 weren't actually scared of the bystanders.

23 First, you have the video where no one looks the
24 least bit scared. You can watch the videos and see that for
25 yourselves.

1 Second, you have the defendants' actions.

2 Defendant Thao mocked the bystanders. Again, Defendant
3 Kueng picked gravel out of a tire. Defendant Lane squatted
4 casually, arms dangling loosely over his thighs.

5 Even Kueng told you from his side of the squad car
6 he simply assumed the scene might not be safe because
7 Officer Chauvin didn't do anything. Yet, he never said a
8 word to ask Chauvin about it.

9 Defendant Thao straight up told you the scene was
10 safe enough to render medical aid to Mr. Floyd.

11 And, finally, you know they weren't threatened
12 because none of the defendants did any of the things
13 officers do when they are threatened. They didn't call for
14 backup or Thao could have asked Lane, who stand 6'7" tall
15 and was serving no purpose near George Floyd's feet, to
16 come --

17 MR. ROBERT PAULE: Your Honor, I'd object. That
18 violates the pretrial order and she's shifting the burden.

19 THE COURT: I sustain that. You can't do that,
20 counsel.

21 MR. ROBERT PAULE: Would note the record for
22 prosecutorial misconduct repeatedly during the closing
23 argument.

24 THE COURT: Noted.

25 Continue.

1 MS. SERTICH: The truth is Thao didn't need
2 help --

3 MR. ROBERT PAULE: I'd object to the use of the
4 word "truth." No one knows what the truth is or is entitled
5 to it. That is totally improper.

6 THE COURT: Overruled. It's final argument.

7 MS. SERTICH: The truth is Thao didn't need help
8 because the bystanders weren't a threat. Kueng told you as
9 much from the stand.

10 The defendants never informed EMS that the scene
11 was not Code 4, meaning safe, and did not warn EMS that
12 there was any danger before or upon their arrival. Kueng
13 testified he didn't feel it was necessary for him to do
14 anything to assist Thao as the paramedics arrived on the
15 scene. And the paramedics were, in fact, able to safely
16 load Mr. Floyd onto a stretcher and get him in the
17 ambulance.

18 The defendants never believed that these
19 bystanders were a threat. The people standing there were,
20 in fact, doing more than the officers. And that's the
21 problem with this scene. The officers, and not the
22 bystanders, should have been doing everything in their power
23 and authority to stop the unreasonable force in front of
24 them.

25 MR. GRAY: Judge, I object to this. My client is

1 not charged with intervention and she keeps including "the
2 officers." She can separate them by --

3 THE COURT: Well, counsel, I think it's very clear
4 that there's a Count 2, there's a Count 3. To the best of
5 my knowledge, she's dealing with Count 2 and your client is
6 not charged in Count 2.

7 MR. GRAY: Thank you.

8 THE COURT: Continue.

9 MR. PLUNKETT: Objection. Burden shifting too,
10 Your Honor.

11 THE COURT: It's overruled.

12 MS. SERTICH: Again, watch the video.

13 The bystanders only really got loud when George
14 Floyd was transferred with no pulse and not breathing, head
15 hanging limply to the side onto a stretcher. Even then was
16 Thao concerned or threatened when they were at their most
17 agitated?

18 (Video recording played)

19 No. He turned his back on them. They all did. A
20 reasonable officer would not turn his back on a threat.

21 The third part of this second element has been
22 proven beyond a reasonable doubt. Kueng and Thao had the
23 opportunity and the means to intervene in Chauvin's use of
24 force.

25 Now, the last part of this element, part "D" on

1 the screen, requires you to consider whether Defendants Thao
2 and Kueng failed to take reasonable steps to intervene to
3 stop the unconstitutional force.

4 That's easy, even though it was not easy to watch,
5 because neither of these defendants took any steps, not one,
6 to even try to get Mr. Chauvin off of Mr. Floyd. You've
7 seen the video. Not one. Not one statement. Not one
8 gesture. Not one physical intervention.

9 The only officer who said anything at all,
10 Defendant Lane, isn't charged in this count. And when
11 Defendant Lane asked for the first time if they should roll
12 Mr. Floyd on his side, Kueng shot him down. He said, "No,
13 just leave him."

14 Those are the four parts of this constitutional
15 violation and that is how you know the evidence proves
16 Defendants Thao and Kueng violated George Floyd's right to
17 be free from Officer Chauvin's use of unreasonable force,
18 the second element of Count 2.

19 Also keep in mind every police officer has their
20 own independent duty to intervene. That makes sense,
21 because it doesn't help the person in custody if everyone
22 can point their finger and say later it was someone else's
23 responsibility, like here if Thao tried to argue it was
24 Kueng and Lane's duty because they're sitting right there
25 next to Officer Chauvin or if Kueng tried to say his duty to

1 intervene goes away because he heard Chauvin rebuff Lane's
2 questions. The responsibility is on them all. They all
3 have to act. The constitutional duty to act applies to them
4 individually and independently.

5 Also keep in mind that an officer has a duty to
6 intervene regardless of rank or seniority. Now, that's not
7 really a concern with respect to Thao. He's right there.
8 He's experienced. He's Chauvin's partner. He certainly had
9 the means to save his partner from himself.

10 But what about Kueng? You heard from Lieutenant
11 Zimmerman, from Inspector Blackwell, from Officer Mackenzie,
12 from Chief Longo, even from defense expert Steve Ijames
13 everyone has the duty to intervene. It's right there in the
14 MPD policy.

15 And the MPD encouraged that kind of behavior
16 early, at the academy, remember, by telling academy
17 recruits, like Kueng, that they would be responsible for the
18 actions of their co-recruits and actually both their actions
19 and their inaction at the academy before they were even on
20 the streets.

21 And, yes, the MPD policy and procedures manual is
22 more than 500 pages long, but the recruits got a smaller
23 selection in that academy handbook, just 30 pages selected
24 for the recruits as the most important to learn. And what
25 was included? Use of force, duty to intervene. And then

1 they discussed it with the recruits and used scenario-based
2 training to emphasize the communication that has to happen
3 among a team of officers using force.

4 Inspector Blackwell told you that their final
5 scenario at the academy involved a fight with five suspects,
6 and the main point of this scenario was for the recruits to
7 communicate with one another.

8 And so as soon as they got a suspect into custody,
9 they had to roll the suspect over on their side and
10 communicate with the other recruits on the scene about what
11 to do next. And they had to keep repeating that strategy
12 with each suspect until the scene was controlled and safe.

13 Kueng also should be expected to intervene because
14 he'd been trained on how to intervene when someone is
15 committing a crime. He had been trained on how to gain
16 compliance when someone isn't doing what they're supposed
17 to. That starts with presence and then moves to verbal
18 commands and then moves to physical contact.

19 He practiced those during his FTO period when he
20 went on about 185 calls for service, including calls -- and
21 you all heard about the details of one -- where Kueng had to
22 work with other officers to restrain a violent person and
23 attempted to get that person up off the ground, even while
24 the person was still kicking.

25 Mr. Chauvin was the same rank, officer, as the

1 defendants here. It makes no difference that an officer has
2 19 years on the job with lots of experience on the street or
3 if the officer has five months on the job like Defendant
4 Kueng, whose training is still fresh in his head.

5 As Lieutenant Zimmerman told you, when we take our
6 oath to be police officers, when they pin that badge on us,
7 it doesn't mean that you get a free pass for a day or a week
8 or six months or a year. It means that you're responsible
9 for a person's safety, just as much as I would be or the
10 chief of police would be. We all take the same oath.

11 And you know what? That makes sense. When
12 someone calls the police, they don't get to ask for a
13 19-year veteran. They're asking for a sworn officer,
14 someone with the authority to enforce the laws the way they
15 can't on their own.

16 When an officer takes on that responsibility, they
17 assume all of the responsibilities, the duties that come
18 with it. They don't get to pick and choose, follow some
19 obligations and not others, or to protect people in custody
20 only when a new officer is on scene, but not when an
21 experienced officer shows up. The laws of the United States
22 simply do not permit experienced or new police officers to
23 violate the rights of the people in their custody.

24 And one other thing. You've heard a lot about
25 whether Officer Chauvin controlled the scene. Everyone,

1 including the defendants themselves, agreed that controlling
2 a scene doesn't change the duties of the noncontrolling
3 officers.

4 But look and listen carefully what Officer Chauvin
5 says and also to how little he says over the course of nine
6 and a half minutes, how Kueng rebuffs Lane when Lane first
7 asks if Mr. Floyd should be rolled on his side. Officer
8 Chauvin is not ordering these defendants around. He barely
9 talks to them.

10 And you don't need training to know that niceties,
11 like the need to call someone "sir," do not trump a human
12 life. You just need plain old common sense and plain old
13 human decency. The officers knew that George Floyd couldn't
14 breathe, didn't have a pulse, and was dying.

15 The defense has suggested that it was difficult or
16 uncomfortable for newer officers to question the actions of
17 Chauvin, but this argument simply means that they balanced
18 the discomfort of questioning a colleague against protecting
19 the safety of a man in their custody and care, and then made
20 the choice not to upset their colleague rather than do their
21 duty, even though that choice resulted in the death of a
22 human.

23 The government has proven beyond a reasonable
24 doubt that the defendants violated George Floyd's
25 constitutional rights by failing to intervene, which is the

1 first element of Count 2.

2 The next element to address is whether the
3 government has proven the defendants acted willfully,
4 meaning they acted with a bad purpose or improper motive to
5 disobey or disregard the law, specifically intending to fail
6 to do what the law requires. What this means is that the
7 defendant has to intentionally fail to intervene knowing
8 that the law requires him to intervene.

9 This means the government must prove that Thao and
10 Kueng knew that failing to intervene was wrong, but they
11 failed to do it anyway. In other words, they knew better.

12 Don't get tripped up by the term "bad purpose."
13 It is a bad purpose for an officer to know his duty and
14 decide not to act. If you have kids, you know what
15 "willfulness" means. It's not complicated. They know it's
16 wrong and they do it anyway. That's the bad purpose. They
17 don't have to intend a tragic outcome and they don't have to
18 wish someone harm.

19 Here's something important to keep in mind. In
20 order to prove that the defendants acted willfully, the
21 government does not have to show that the defendants acted
22 with any ill will towards George Floyd or even that they
23 intended to hurt him.

24 I wanted to repeat this because you should keep
25 this in mind when defense counsel is making their closing

1 arguments. The government has not alleged and does not need
2 to prove any ill will towards George Floyd.

3 For Count 2 the government has to prove the
4 defendants knew the force Officer Chauvin was using was
5 unreasonable and that they had a duty to stop it and yet
6 they chose, for whatever reason, to ignore that duty.
7 That's willfulness.

8 And willfulness is a state of mind, which means
9 that for this element you have to figure out what was in the
10 defendants' heads. There are a few ways to figure out
11 what's going on inside an officer's head.

12 Sometimes you can tell by what he does or doesn't
13 do or what he does or doesn't say. And another way you can
14 figure out what's in an officer's head is to look at the
15 training he received and the policies he agreed to. You can
16 figure out what was in his head by looking at the
17 information that was put in his head during training.

18 Here, the defendants from their training very well
19 knew they were required to intervene in an unreasonable use
20 of force. They chose not to intervene. They acted
21 willfully.

22 You heard from Chief Kelly McCarthy of the
23 Minnesota POST Board that the duty to intervene is one of
24 those core learning objectives that's so important, they
25 bring it up through all of the officers' education.

1 And Defendants Thao and Kueng received explicit
2 training on the duty to intervene as well. Their decisions
3 in this case certainly violated MPD policy, which is proof
4 of their willfulness.

5 MR. PLUNKETT: Objection. Improper statement.

6 THE COURT: It's overruled.

7 MS. SERTICH: As you saw --

8 THE COURT: Continue.

9 MS. SERTICH: -- MPD policy sets forth a clear use
10 of force policy that requires officers to use the amount of
11 force that is objectively reasonable in light of the facts
12 and circumstances known to the officer at the time the force
13 is used. This is just the beginning of that policy, you
14 might remember. As you may recall, the sanctity of life is
15 of paramount concern. It is one of the purposes or
16 cornerstones of the policy.

17 The MPD policy and procedure manual also clearly
18 sets forth these defendants' duty to intervene. It shall be
19 the duty of every sworn employee present at any scene where
20 physical force is being applied to either stop or attempt to
21 stop another sworn employee when force is being
22 inappropriately applied or is no longer required.

23 You heard testimony from Inspector Blackwell that
24 Kueng received training on this point in the year prior to
25 the killing of George Floyd while he was training at the

1 academy.

2 Thao also learned of the formalized duty to
3 intervene as part of MPD policy when it was added to the
4 policy and procedural manual in 2016. He was also trained
5 on the policy during defensive tactics refresher courses in
6 2018 and 2019.

7 Take a close look at that policy again. Every
8 sworn employee. There are no exceptions here, not for
9 officers of different ranks, ages, or seniority. The
10 defendants knew this. They understood it.

11 One of the purposes of this policy, as we heard
12 from the law enforcement witnesses in this case, is to
13 protect other officers from themselves in challenging
14 situations. Why would that not apply to our more junior
15 officers?

16 Kueng told you he knew he had the duty to
17 intervene, but he didn't intervene in part because he didn't
18 know whether the scene was safe. I understand why he would
19 say that now, but we've already discussed what he said and
20 did that day that make it clear he and the other officers
21 did not feel that way on May 25th, 2020.

22 Kueng also told you he didn't intervene because he
23 didn't know the force was unreasonable. Derek Chauvin
24 pressed his knee into George Floyd's neck for nine and a
25 half minutes. Kueng testified he didn't recognize the force

1 as unreasonable because he believed Chauvin could be using a
2 leg to neck restraint that's mentioned in MPD policy but
3 that he and the other officers were never trained to use.

4 But it does not matter whether Kueng recognized
5 this leg restraint as part of MPD policy or not because, as
6 he was trained at the academy, neck restraints of any kind,
7 as described in MPD policy and during training these
8 defendants actually received, including hands-on,
9 scenario-based training, can only be used on subjects who
10 are actively resisting, period.

11 Active resistance is when a person engages in
12 action to make it more difficult for officers to achieve
13 actual physical control. Again, review the video evidence
14 in this case. The three officers atop Mr. Floyd had
15 physical control of Mr. Floyd very early in the restraint,
16 and so they knew from training the use of any neck restraint
17 after that time, based on the policy and based on their
18 training, is unreasonable, regardless of the exact technique
19 being used, arm, leg, doesn't matter, and regardless of the
20 amount of pressure that was being applied.

21 And the scenario-based drills these officers had
22 on the use of neck restraints had, consistent with MPD
23 policy, trained them that when an officer uses a neck
24 restraint and causes someone to go unconscious, the officer
25 must take immediate steps to assess the person's condition

1 and aid a person to bring them back to consciousness.

2 Here, Kueng could see the exact opposite. Chauvin
3 tipped kneeling on Mr. Floyd, keeping him unconscious.
4 Chauvin's unreasonable force was obvious and inexcusable.
5 The only people who have suggested otherwise are the
6 defendants, and their self-interest is obvious.

7 MR. PLUNKETT: Objection. Burden shifting.

8 THE COURT: Sustained.

9 MS. SERTICH: Everyone else, from children on the
10 scene, to the defense's expert, and everyone in between,
11 acknowledged that Chauvin's force was indefensible.

12 MR. ROBERT PAULE: Your Honor, I'd object on
13 burden shifting and the continuing, continuing referring to
14 a juvenile witness who has not testified.

15 MS. SERTICH: We have many other juveniles on the
16 scene.

17 THE COURT: Counsel, there were multiple people
18 that were under the age of 18 at the time of this. So to
19 the one person, yes, I sustain. To the other people, I'd
20 overrule. In the meantime, it's final argument. Let's
21 continue.

22 MS. SERTICH: Thank you, Your Honor.

23 Defendant Thao said he didn't intervene because he
24 trusted the other officers on scene to do the right thing.
25 His argument completely undermines the point of

1 intervention.

2 He was trained that when you see something that
3 doesn't look lawful, you have to do something about it and
4 not blindly follow another officer's judgment. And, by the
5 way, he could see that the other officers on the scene were
6 not doing the right thing.

7 MR. ROBERT PAULE: I'd object to that as
8 misstating the facts, Your Honor.

9 MR. GRAY: Object to that, Your Honor. It
10 includes my client --

11 THE COURT: It's overruled. It's final argument,
12 counsel. Let her argue.

13 MS. SERTICH: The defendants voluntarily and
14 intentionally chose not to act in this case, contrary to
15 their training. The government has proven their willfulness
16 beyond a reasonable doubt.

17 That brings us to the fourth and final element of
18 Count 2. As to failure to intervene, the government must
19 prove and has proven in this case that when the defendants
20 failed to intervene, George Floyd suffered bodily injury
21 and/or died as a result of the defendants' conduct.

22 During your deliberations, if you find the
23 defendants guilty of Count 2, that will just be based on the
24 bodily injury and then you will have the opportunity on the
25 verdict form to indicate whether the offense also resulted

1 in the death of Mr. Floyd or, as has been proven over the
2 past several weeks, both bodily injury and death.

3 Bodily injury is easy to figure out. You will see
4 in the instructions it means anything from a cut or
5 abrasion, to physical pain, to impairment of a bodily organ.

6 You saw overwhelming evidence of injury to George
7 Floyd in this case that was caused by the force when he was
8 restrained on the ground, from his cries of pain, to his
9 abrasions that Dr. Baker told you were consistent with being
10 pressed against the concrete, to the impairment of his
11 airway, lungs, and eventually heart and brain while the
12 officers compressed his body.

13 For Count 2 Judge Magnuson will instruct you that
14 death results from the constitutional violation where
15 Mr. Floyd's death was a foreseeable result of the
16 constitutional violation. You should note here that the
17 government does not have to prove that the defendants
18 intended for Mr. Floyd to die.

19 The medical examiner who conducted the autopsy in
20 this case, Dr. Baker, determined that Mr. Floyd died from
21 cardiopulmonary arrest, complicating law enforcement subdual
22 restraint and neck compression. In layman's terms,
23 Mr. Floyd died because his heart and lungs stopped working,
24 and the immediate cause was being subdued and then
25 restrained with a neck restraint by law enforcement.

1 Dr. Baker said Mr. Floyd's underlying health
2 conditions played a contributing role, but were not the
3 immediate cause of death.

4 He also deferred to a pulmonologist about whether
5 the partial blockage of an airway and the inability of a
6 person to fully expand their chest cavity could cause
7 someone to die by asphyxiation and deferred to a
8 toxicologist about whether the drugs in Mr. Floyd's system,
9 fentanyl and methamphetamine, would have been enough to kill
10 someone with Mr. Floyd's history.

11 He classified the death as a homicide, meaning the
12 actions of another person or persons were involved in
13 causing Mr. Floyd's death.

14 You heard the testimony of medical care providers
15 and experts during this trial, Dr. Systrom and Dr. Bebarta,
16 physicians whose lives' work revolve around the lungs and
17 the heart, toxicology and resuscitation.

18 What you learned from them is that George Floyd
19 died while being restrained on the ground and that he died
20 from asphyxiation because of the unreasonable force, the
21 obstructive and restrictive compression that prevented him
22 from getting sufficient oxygen.

23 Over the course of the restraint, George Floyd was
24 deprived of oxygen because his body was compressed and
25 restricted in a way that didn't allow him to take in and use

1 sufficient oxygen to keep his brain functioning and his
2 heart beating.

3 That deprivation came from being held down on
4 concrete with his arms handcuffed behind his back; from
5 Chauvin's knees on his upper airway and posterior chest
6 wall, which partially blocked his airway and prevented his
7 chest and diaphragm from expanding; from Defendant Kueng's
8 downward pressure on Mr. Floyd's wrist, which pushed
9 Mr. Floyd's forearm into his back.

10 What you can conclude is that while Officer
11 Chauvin's actions, along with the actions of Dr. Kueng
12 [sic], caused these issues, the failure to intervene then
13 also resulted in this death.

14 You heard from Dr. Systrom that George Floyd did
15 not die from a heart event that day and would not have died
16 from a heart event that day had he not been restrained on
17 the ground by the officers.

18 You heard from Dr. Bebarta, the emergency room
19 physician and toxicologist, that George Floyd did not die
20 from a drug overdose that day and would not have died from a
21 drug overdose without the actions and inaction of these
22 defendants.

23 A key measurement taken in the ambulance,
24 Mr. Floyd's end-tidal carbon dioxide level, was almost
25 double the normal level, and this is scientific and

1 measurable proof that Mr. Floyd died from low oxygen.

2 While it has been a few weeks since evidence from
3 these experts was presented to you, you will recall that
4 none of these facts or their conclusions were seriously
5 contested.

6 MR. PLUNKETT: Objection. Burden shifting.

7 THE COURT: That's overruled.

8 MS. SERTICH: The government has presented you
9 with proof beyond a reasonable that Officer Chauvin's
10 unreasonable force resulted in both -- I'm sorry. The
11 government has presented you with proof beyond a reasonable
12 doubt that the defendants' conduct in failing to intervene
13 in Officer Chauvin's unreasonable force resulted in both
14 bodily injury to and the death of George Floyd.

15 All four elements of Count 2 have been met.
16 Defendants Thao and Kueng are guilty of the crime charged in
17 Count 2.

18 That brings us to Count 3, deliberate
19 indifference, for which there are also four elements, four
20 things the government must prove beyond a reasonable doubt
21 as applicable to all three defendants, Thao, Kueng, and
22 Lane.

23 Again, we'll address that third element first,
24 that the defendants acted under color of law, which is the
25 same as Count 2. Just as in Count 2, you know the element

1 is satisfied because the parties have stipulated to it.

2 Now, moving back up to the first element, the
3 government must again prove that defendants deprived George
4 Floyd of a right secured by the Constitution of the laws of
5 the United States, but for Count 3 this is a different
6 constitutional right.

7 Count 3 charges all three officers with a
8 constitutional violation called deliberate indifference or
9 the failure to provide Mr. Floyd with medical aid. A police
10 officer violates the Constitution when he or she
11 deliberately denies or delays critical medical care to a
12 person in police custody.

13 Like the constitutional violation in Count 2, this
14 one also has some subelements that we have to go through.

15 First, the government must prove, in "A" up on the
16 screen there, that Mr. Floyd had an objectively serious
17 medical need.

18 Judge Magnuson will tell you that a serious
19 medical need includes a need that is so obvious that even
20 people with no formal medical training would recognize that
21 care is required. So obvious, say, that a teenager can
22 recognize it.

23 Here, there was no doubt that George Floyd had a
24 serious medical need. That evidence was overwhelming. He
25 couldn't breathe, as the officers heard from both him and

1 the bystanders. He passed out, as noted by Defendant Lane.
2 Eventually Kueng couldn't find a pulse. Mr. Floyd went into
3 cardiac arrest and died.

4 The first part of this element has been met.

5 The second part of deliberate indifference --
6 that's "B" on this list -- is that the defendants knew of
7 the serious medical need. You can use your common sense on
8 this point, like any other.

9 Kueng testified that he couldn't say whether he
10 thought Mr. Floyd had a serious medical need while Mr. Floyd
11 was restrained on the ground. As jurors, you get to decide
12 what testimony you believe or do not believe.

13 You should not believe Kueng's testimony on this
14 point because, as he also testified, he thought it was
15 possible Mr. Floyd was suffering from excited delirium,
16 which he had been trained was a potentially dangerous
17 problem.

18 He was aware Mr. Floyd was initially saying he
19 couldn't breathe. He heard Mr. Floyd's talking slow and
20 then observed that Mr. Floyd stopped talking. He observed
21 that Mr. Floyd stopped moving. He heard Lane say that
22 Mr. Floyd had lost consciousness and then, of course, he was
23 unable to find a pulse.

24 As jurors, you can use your common sense to
25 consider this testimony. Anyone, anyone can recognize that

1 someone with a knee on their neck who has slowly lost the
2 ability to speak, stopped moving, and gone unconscious has a
3 serious medical need.

4 Kueng had to have felt Mr. Floyd grow weaker and
5 weaker and then limp underneath him. Any person, even
6 without checking a pulse and without any training, let alone
7 emergency medical responder certification, can see that
8 would be a serious medical need.

9 Add to that the fact that a person's pulse cannot
10 be found, for any person, any reasonable person trained or
11 untrained, that is an emergency requiring immediate action.

12 As Genevieve Hansen said on the scene that day,
13 the fact that they aren't checking for a pulse and doing
14 chest compressions at that point is on another level.

15 Thao was also aware of the serious medical need
16 because, although while he told you Mr. Floyd's trachea was
17 being protected by the ground, I think we heard that right,
18 he thought Mr. Floyd's trachea was being protected by the
19 ground, he stood for six minutes and stared at Officer
20 Chauvin and George Floyd while Mr. Floyd said he couldn't
21 breathe, fell silent, stopped moving, and then was rendered
22 unconscious.

23 He was right there, not yet curbside facing the
24 bystanders, for more than six minutes. Then when he faced
25 the bystanders, they repeatedly told him in all the ways

1 we've discussed that George Floyd was in serious medical
2 need.

3 Charles McMillian, 61 years old and out being
4 nosey in the neighborhood, as he described it, told you that
5 he was trying to tell the officers that what they were doing
6 was wrong because he could tell things weren't right with
7 Mr. Floyd and that he could not breathe.

8 This raises another point that may seem obvious.
9 To the extent Thao turned away from Officer Chauvin and
10 Mr. Floyd after six minutes, he already knew something was
11 very wrong. He saw Mr. Floyd was unconscious, and he was
12 told that it was getting even worse. Thao does not get a
13 pass on knowledge of Mr. Floyd's serious medical condition
14 by actively attempting to avoid it.

15 Now, in addition to those same reasons we know
16 Kueng was aware of Mr. Floyd's serious medical needs, we
17 know Lane was aware of Mr. Floyd's serious medical needs,
18 but also because he talked about it. He expressed concern
19 about excited delirium and twice asked whether Mr. Floyd
20 should be rolled on his side.

21 When Lane testified, he tried to scale back his
22 concern for Mr. Floyd's serious medical need to make it seem
23 like he possibly didn't have knowledge of those medical
24 needs, but you saw what his belief was in those moments on
25 top of Mr. Floyd.

1 The second part of deliberate indifference, that
2 the three defendants actually knew Mr. Floyd had a serious
3 medical need, has been proven in this case.

4 The third party of the constitutional violation,
5 which is part "C" up on the screen, is that the officers
6 failed to take reasonable measures to address Mr. Floyd's
7 serious medical need, which is clearly met here because they
8 did nothing to render medical aid during the time Mr. Floyd
9 lay on the ground.

10 Jenna Scurry, the dispatcher, who could tell
11 something was wrong after watching the events unfold on a
12 small screen in her office, testified that none of the
13 officers, which would include Lane, who made the original
14 call to EMS, and Thao, who upped the request to the more
15 urgent Code 3, did not request fire and rescue.

16 Contrary to their training and common sense, they
17 did not tell dispatch the reason for the upgrade to the
18 Code 3 emergency, never said the patient was having
19 difficulty breathing, never said the patient was
20 unconscious, never said they couldn't find a pulse, even
21 though the radios are right there on their shoulders. Derek
22 Smith told you that in this case he should have been told
23 why there was a change from Code 2 to Code 3.

24 And had the officers even taken that simple step,
25 Jenna Scurry told you the Minneapolis Fire Department would

1 have been on the scene earlier. Fire Captain Jeremy Norton
2 and Firefighter Genevieve Hansen told you they could have
3 started CPR on the ground and the paramedics could have
4 arrived prepared to deal with a cardiac arrest. Instead
5 they responded to a Code 3, mouth injury.

6 As you heard from a number of witnesses, including
7 defense expert Steve Ijames, the most simple form of medical
8 aid, placing Mr. Floyd in the side recovery position, should
9 have been performed before Mr. Floyd fell unconscious. Any
10 of these three defendants could have taken that step and
11 saved George Floyd's life before his condition moved from
12 serious to critical.

13 As you also heard from Inspector Blackwell and
14 Officer Mackenzie and as common sense tells you, Lane's two
15 questions about whether Mr. Floyd should have been rolled on
16 his side were not reasonable medical measures.

17 The questions were not reasonable measures to
18 address Mr. Floyd's serious medical need. The questions did
19 not get Mr. Floyd more air in his lungs. They didn't get
20 the officers stopping his breathing [sic] off of him so that
21 he could expand and contract his lungs and take air into his
22 throat.

23 Then, as you again very clearly heard from Officer
24 Mackenzie and Inspector Blackwell, as soon as these former
25 officers discovered George Floyd did not have a pulse, they

1 should have immediately started CPR. It didn't matter
2 whether the ambulance had been called. They should have
3 started that immediately. Remember what Lieutenant
4 Zimmerman said? You do everything you can until a medical
5 professional can take over the medical aid.

6 You've heard some testimony that while Mr. Floyd
7 certainly needed immediate CPR, Kueng and Lane weren't sure
8 the scene was safe enough to perform any additional medical
9 assessment or medical care of any kind because there were
10 people nearby they couldn't see who were shouting.

11 But defense expert Steve Ijames conceded that
12 Kueng could have stood up and checked Mr. Floyd's carotid
13 pulse, just like the paramedic, Derek Smith, did a few
14 minutes later.

15 And, again, common sense. They could have rolled
16 Mr. Floyd on his side or performed CPR in the exact place
17 where they had him restrained on the ground and would have
18 been in the exact same position in terms of their safety.
19 All three defendants testified they knew time is of the
20 essence when CPR is needed.

21 One last thing on the failure to provide medical
22 aid. Maybe these officers were mistaken about what exactly
23 was ailing Mr. Floyd. To be clear, the defendants don't
24 have to correctly diagnose the problem. They have to
25 recognize there is a problem and do something.

1 All three defendants mentioned at various points
2 their suspicions that Mr. Floyd was on drugs. So perhaps
3 they were concerned he was overdosing or perhaps they were
4 concerned about excited delirium, as Lane mentioned.

5 Let's talk about excited delirium for a moment.
6 We all watched the videos of George Floyd's encounter with
7 law enforcement, and we all watched the six or so videos
8 that the defendants watched during their excited delirium
9 training. Watching all of those videos called a phrase to
10 mind, "one of these things is not like the others."

11 These MPD officers were shown what excited
12 delirium looks like and sounds like, and that's not what
13 Mr. Floyd looked like or sounded like. Even for Thao, who
14 didn't show up on the scene until Mr. Floyd was resisting
15 getting into the squad car, Mr. Floyd's behavior did not
16 resemble what we saw in those videos. He was communicating
17 with the officers, not running around naked, covered in
18 blood. Mr. Floyd even said that he wanted to lay on the
19 ground.

20 But let's assume for a moment that one or more of
21 the defendants mistakenly thought Mr. Floyd was suffering
22 from excited delirium. You all heard a lot of testimony
23 that shows that excited or agitated delirium is a
24 controversial topic, that understanding what it is is hard,
25 that diagnosing it is hard, that figuring out exactly what

1 factors will cause it is hard.

2 But what we saw from the MPD training that all
3 three defendants received and heard from a number of
4 witnesses is that regardless of whether anyone can
5 accurately identify excited delirium, the treatment is the
6 same. Once you get that person restrained and handcuffed,
7 you get them in the side recovery position as soon as
8 possible, just like you do with anyone else who is prone and
9 handcuffed and successfully restrained, except it may be
10 even more urgent to get them in the side recovery position
11 there because, according to the training, the danger of
12 dying during an episode of excited delirium is so much
13 higher.

14 You heard from a number of witnesses that an
15 officer in this situation should hover nearby, perhaps
16 resting a hand on the arrestee to make assessment easier and
17 to be ready if the arrestee wakes up in an agitated state,
18 but you should not keep them in the prone position
19 indefinitely and certainly not while they are rendered
20 unconscious or lose a pulse.

21 As Officer Mackenzie and defense expert Ijames
22 told you, the officers are trained to always do those ABCs
23 of assessment, airway, breathing, and circulation, and then
24 react if something goes wrong. The assessment isn't
25 providing medical aid. It's how the officers figure out

1 what aid they need to provide. These defendants didn't do
2 any of that.

3 The excited delirium training directed the
4 officers to place a person in the side recovery position
5 once a person has been restrained. And as you heard from
6 Officer Mackenzie, that side recovery position is taught in
7 half a dozen different courses at the academy: EMR, CPR,
8 excited delirium, Narcan, and tactical combat casualty care,
9 also in a training video on positional asphyxia. These
10 officers learned this concept repeatedly because it is basic
11 and foundational to much of the care officers are trained to
12 provide.

13 The defendants here failed to take any reasonable
14 measures to address Mr. Floyd's serious medical need. The
15 second element of Count 3 has been satisfied.

16 So having gone through all the subelements of the
17 first element of Count 3, we can move on to the second
18 element of Count 3, deliberate indifference, which is,
19 again. The willfulness:

20 And you will see we have the same basic definition
21 of "willfulness" that we saw in Count 2, but here the
22 government must prove that the defendants knew George Floyd
23 was in serious distress and knew that they had a duty to do
24 something about it and yet they intentionally failed to aid
25 him. That's willfulness in the context of Count 3.

1 The defendants, from their training, from the
2 sheer obviousness of Mr. Floyd's condition and how he went
3 from saying he couldn't breathe to not having a pulse during
4 the nine and a half minutes Chauvin knelt on his neck, very
5 well knew Mr. Floyd had a serious medical need.

6 That they did nothing to change the position he
7 was in after so many red flags demonstrates their
8 willfulness. Because they knew Mr. Floyd needed aid and
9 they didn't aid him, they acted willfully.

10 Now, this should be common sense, but the
11 defendants also had so much training. Defense expert Steve
12 Ijames took no issue with their medical training.

13 The MPD policy and procedure manual contains the
14 department's policy relating to the provision of medical
15 care. This applies to all people in need of medical aid
16 that the officers encounter, whether or not in their custody
17 and care.

18 The policy says that if MPD officers come into
19 contact with someone in medical crisis, they should contact
20 EMS and, while waiting for EMS, provide any necessary first
21 aid consistent with MPD training.

22 From Officer Nicole Mackenzie we learned exactly
23 what that medical training was. When they were cadets, the
24 defendants received a 40-hour emergency medical responder
25 course with both textbook learning and in-class lectures,

1 culminating in EMR certification. They trained for and
2 received CPR certification.

3 They participated in training regarding positional
4 asphyxia and the dangers of leaving an arrestee in the prone
5 and handcuffed position. Notice what it says on the bottom
6 of this screen. "When there's pressure coming up to the
7 chest, a person has to lift body weight."

8 They participated in training regarding the
9 necessity for constant monitoring of the ABCs of arrestees
10 in the care and custody of officers and reassessment of the
11 care and treatment being provided to that arrestee.

12 Defendants Kueng and Lane had been through the
13 program less than a year before George Floyd was killed.
14 Defendant Thao, who had been through the program a number of
15 years prior, received annual in-service medical training
16 with alternating years where he was refreshed on either CPR
17 or Narcan and received this positional asphyxia training
18 separately.

19 And throughout all of the training, both at the
20 academy and during in-service training, many different
21 courses are permeated with instructions regarding the side
22 recovery position.

23 Defendant Lane received additional training while
24 he was working at the Hennepin County Juvenile Detention
25 Center. He had CPR training there and training regarding

1 positional asphyxia. He was trained on the dangers of
2 putting pressure on a subject's torso or neck when they are
3 on the ground with their hands behind them. He was trained
4 that once restraints are applied, a person should be placed
5 in a position that doesn't restrict breathing right away.

6 Officer Mackenzie testified that, according to MPD
7 training, Mr. Floyd should have been placed in the side
8 recovery position within the first couple of minutes of when
9 he was restrained on the ground. The fact that George Floyd
10 was saying "I can't breathe" should have further prompted
11 the officers to take that step to address George Floyd's
12 serious medical need.

13 Now, significantly, Officer Mackenzie made clear
14 that these officers were trained that just because an
15 arrestee can talk does not mean the arrestee is receiving
16 sufficient oxygen.

17 These defendants knew what they were doing was
18 wrong and they did it anyways. This is proof of the
19 willfulness the defendants acted with in choosing not to aid
20 Mr. Floyd.

21 Now, some of you might be asking yourselves about
22 Defendant Lane in particular, why isn't it enough that he
23 was concerned about excited delirium and asked twice if
24 Mr. Floyd should be rolled over? After all, he was so much
25 junior to the guy actually using the force. Why isn't that

1 enough? And I want to answer that head on.

2 Lane's suggestions demonstrate that he knew
3 Mr. Floyd needed help and he knew what help to give, but
4 Lane's statements didn't get Mr. Floyd any more oxygen. And
5 in the circumstances of this case, Lane's suggestions
6 weren't reasonable measures, not when the force being used
7 by Officer Chauvin was so dangerous and went on for so long.

8 And because it would have taken so little for
9 Lane, for any of the defendants to render help, if they had
10 said, "He is not okay, we need to roll him now," then they
11 could have rolled George Floyd over and that small action
12 would have saved his life.

13 The defense wants you to think that there's
14 nothing the defendants could have done, that if they had
15 told Officer Chauvin to stop --

16 MR. PLUNKETT: Objection. Disparaging.

17 THE COURT: It's final argument. Continue.

18 MS. SERTICH: -- that if they had told Officer
19 Chauvin to stop, he would have kept going. But we don't
20 know that.

21 MR. GRAY: Judge, I object to that. He was told
22 to stop.

23 THE COURT: Again, counsel, it's final argument.
24 Continue.

25 MS. SERTICH: Listen and see if he was told to

1 stop. He was never tapped on the shoulder. Never said, "He
2 can't breathe. We need to get up." Never picked up a radio
3 or a cell phone. Never called a supervisor or, even once
4 they noticed George Floyd had no pulse, "Get off of him. We
5 need to find a pulse." For Thao, all it would have taken
6 was taking a step or two back to the side and saying, "If
7 you don't have a pulse, it's time for CPR." But instead
8 they did nothing.

9 We also know Defendant Lane asked those couple of
10 questions, but notice those questions happened before he and
11 Kueng couldn't find George Floyd's pulse. After that he
12 said nothing, did nothing. When the need was the greatest,
13 he did the least.

14 Defendant Lane is differently situated than
15 Defendants Thao and Kueng because he is the one person who
16 spoke up and tried, meekly as it was, to intervene. And for
17 that reason he's not charged in Count 2.

18 MR. GRAY: Judge, I object to that as improper
19 argument, why he's not charged.

20 THE COURT: Yeah, I sustain that, counsel.

21 MS. SERTICH: What he is charged with is failing
22 to even try to render any medical aid.

23 And another way you know that Defendants Kueng and
24 Lane acted willfully, and this goes --

25 MR. GRAY: Judge, I object to her argument saying

1 we know. It's improper argument.

2 THE COURT: She can choose her words. It's final
3 argument.

4 Continue.

5 MS. SERTICH: The other way you know that
6 Defendants Kueng and Lane acted willfully, and this goes to
7 Count 2 for Kueng as well, that they knew what they had done
8 was wrong and did it anyway is because afterward they lied
9 about it and tried to hide what actually happened.

10 Remember that Lane and Kueng gave statements about
11 what happened with George Floyd later that night to their
12 supervisor, Sergeant Pleoger, and to an investigator,
13 Lieutenant Zimmerman. They told Sergeant Pleoger and
14 Lieutenant Zimmerman how George Floyd appeared to be high on
15 drugs, how they struggled to get him into the squad, that
16 they put him on the ground, he was breathing, and then the
17 ambulance arrived, and that they found a pipe on him.

18 Notice what they didn't say. They didn't mention
19 that Chauvin was pressing his knee into Mr. Floyd's neck,
20 that George Floyd was held in the prone position for nearly
21 nine and a half minutes, that Mr. Floyd was saying he
22 couldn't breathe and then stopped talking and moving
23 entirely, that Mr. Floyd fell unconscious or that Mr. Floyd
24 didn't have a pulse for several minutes, even though
25 Defendant Lane had just performed CPR in the ambulance on

1 Mr. Floyd minutes before he gave this statement to Sergeant
2 Pleoger, and notice not a word about excited delirium.

3 Defendant Kueng testified that the report he gave
4 to Sergeant Pleoger was that Mr. Floyd stopped moving after
5 EMS arrived, and then he testified that that report was not
6 true. By the way, Thao was standing there during that
7 report to Pleoger.

8 MR. ROBERT PAULE: I'd object. That misstates the
9 evidence. My client moved away for a great period of time
10 during that.

11 THE COURT: I'll sustain that, counsel.

12 MS. SERTICH: You'll be able to see the times in
13 the video, as you can see in this picture, when Mr. Thao is
14 standing there during the report to Pleoger and note that he
15 added nothing, said nothing.

16 Speaking of lying, you've heard some things on the
17 stand you shouldn't believe.

18 THE COURT: Counsel, you will note an hour and a
19 half has passed. I would suggest that you wrap up as
20 quickly as you can.

21 MS. SERTICH: I have just a few more points here,
22 Your Honor.

23 Here are just a few. Thao wants you to believe
24 his training and experience told him that if a person is
25 talking, they can breathe sufficiently. But as Alyssa

1 Funari pointed out five minutes into the restraint, "Is he
2 talking now?" He was not. If Defendant Thao's true belief,
3 in direct opposition to his training, was if you can talk,
4 you can breathe, he should have sprung into action when
5 George Floyd stopped talking. But he didn't.

6 Kueng wants you to believe that he couldn't hear
7 the bystanders begging him over and over to check George
8 Floyd's pulse, to get the knee off of Mr. Floyd's neck, but
9 that he could hear expletives and he could hear the subtle
10 snap of Officer Chauvin's belt as he removed his Mace.

11 Kueng wants you to believe that the officers
12 wanted to give EMS quick access to George Floyd, even though
13 they didn't do a thing to get Mr. Floyd ready for EMS care.
14 And even when EMS arrived, they all just sat there with
15 Floyd prone in handcuffs, with Chauvin continuing to press
16 his knee into Mr. Floyd's neck.

17 MR. GRAY: Judge, I object to this. It's improper
18 argument. She says they all just sat there when the EMS
19 arrived. That's absolutely false. My client stood up, went
20 over and --

21 THE COURT: The jury will recall the testimony.

22 Continue, counsel.

23 MS. SERTICH: Kueng wants you to believe that he
24 thought George Floyd was attracted to the plexiglass inside
25 of the squad car, a symptom of possible excited delirium,

1 while George Floyd was panicking about the idea of even
2 getting into the car and then struggling to get out.

3 Lane wants you to believe that he thought George
4 Floyd was okay because he saw a vein sticking out in
5 Mr. Floyd's arm, which would mean he still had blood
6 pressure. You never heard or saw any training that seeing a
7 vein in an arm means that someone has a pulse. It also
8 defies common sense.

9 You should not believe any of this testimony, and
10 you can use these lies when you decide to believe or
11 disbelieve Kueng and Lane and Thao's other testimony. The
12 reason a person lies is because the person knows that he
13 has --

14 MR. ROBERT PAULE: I'd object to this as improper
15 vouching.

16 THE COURT: It's final argument.

17 Continue.

18 MS. SERTICH: The reason a person lies is because
19 the person knows he has something to hide. It's evidence of
20 willfulness. Kueng and Lane knew what they did and didn't
21 do was wrong, and that's why they left those details out of
22 their statements to a superior officer and an investigator.

23 The defendants acted willfully when they didn't
24 provide medical care to George Floyd, knowing that he needed
25 it. The third element of Count 3 has been met.

1 As to Count 3, failure to provide medical aid, the
2 government must next prove and has proved that the failure
3 to provide medical aid resulted in Mr. Floyd's bodily injury
4 and death.

5 It stands to reason that if the failure to stop
6 Derek Chauvin's unreasonable force was the cause of George
7 Floyd's death, the failure to provide him with medical care
8 in the moment also caused his death.

9 Because the defendants didn't take those
10 reasonable measures to provide medical aid, rolling
11 Mr. Floyd on his side, performing CPR, Mr. Floyd suffered
12 those same injuries we previously discussed with respect to
13 Count 2.

14 You will recall that Dr. Systrom and Dr. Bebarta
15 testified that, in line with what the MPD teaches its
16 officers, if George Floyd had been placed in a position
17 where he could breathe normally before he was rendered
18 unconscious, he would not have gone into cardiac arrest. He
19 would have lived.

20 It was clear from the moment George Floyd was
21 restrained on the ground that he was having trouble
22 breathing and was in medical distress. The defendants had
23 about five whole minutes to place Mr. Floyd in the side
24 recovery position or sit him upright before more significant
25 medical assistance was needed. They chose to do nothing

1 instead, and in doing nothing caused George Floyd's death.

2 You heard from the same experts that during the
3 minutes the defendants sat there and did nothing, after
4 Mr. Floyd's asphyxia led to his heart stopping, Mr. Floyd's
5 chances of resuscitation plummeted down to zero.

6 Dr. Bebart explained that if a cardiac arrest is witnessed
7 and CPR begins immediately, chances for survival increase
8 exponentially. As you heard from Dr. Systrom, by the time
9 Lane began CPR in the ambulance, it was too late. CPR
10 needed to be started on the ground by the officers to be
11 successful.

12 Instead, contrary to their training, contrary to
13 their EMR and CPR certification, the defendants chose to do
14 nothing for more than two and a half minutes after Mr. Floyd
15 became nonresponsive but before the ambulance arrived,
16 precious minutes, as we know and as they had been trained,
17 when a person is in cardiac arrest. They chose to do
18 nothing, and their choice to do nothing resulted in
19 Mr. Floyd's death.

20 The testimony and evidence presented to you prove
21 all four elements of Count 3 beyond a reasonable doubt.

22 As a community, we have expectations of police
23 officers. We expect officers to not only protect the
24 community, but to serve the community with courage and
25 compassion, like the MPD motto says.

1 We hope they'll walk the beat, get to know the
2 community, knowing that the communities in which they work
3 have strengths and weaknesses; and when people commit
4 crimes, they get arrested and go to jail.

5 Arresting individuals who commit crimes is a big
6 part of police work, but when that happens, if the person
7 gets injured or suffers an overdose or goes into cardiac
8 arrest, then the police do what they are trained to do.
9 They provide medical assistance.

10 It's what we expect from them as a community
11 because that's what the Constitution demands, to act, to
12 provide medical care, to at the very least try to the best
13 of their abilities.

14 And as we've heard from law enforcement officer
15 after law enforcement officer over the last month, what
16 needed to occur in this case was simple. And on May 25th,
17 2020, there was no respect for the sanctity of life, no
18 adherence to the foundation of police work, just these
19 officers' inactions, which led to one thing, George Floyd's
20 death.

21 The government here has the burden of proving
22 beyond a reasonable doubt that Thao and Kueng failed to
23 intervene to stop or attempt to stop Chauvin's unreasonable
24 force and that they and Lane failed to provide George Floyd
25 with necessary medical aid. The government has met and

1 surpassed that burden.

2 Over the last several weeks we've presented you
3 with evidence of the events of May 25th, 2020, evidence of
4 the training these officers received, and a medical review
5 of what happened to Mr. Floyd.

6 But the most important things you need for this
7 case are simple. First, the videos showing what happened to
8 George Floyd while he was restrained on the ground; and,
9 second, your common sense.

10 It is not complicated. All of the witnesses,
11 including the defendants, agreed they had a duty to
12 intervene, a duty to provide medical aid. It is not
13 complicated. Officer Chauvin pressed his knee into George
14 Floyd's neck while he was restrained on the ground for far
15 too long and everyone, including George Floyd, including the
16 bystanders, including these defendants, knew George Floyd's
17 condition was slowly deteriorating, that he was slowly
18 dying. Charles McMillian could tell and did tell the
19 officers that Mr. Floyd couldn't breathe.

20 MR. GRAY: Judge, I object to this as repetitious.

21 THE COURT: Repetitious. I sustain.

22 MS. SERTICH: Alyssa Funari told the officers,
23 "He's not moving. In over a minute, "He's not moving."

24 MR. ROBERT PAULE: Your Honor, same objection.
25 This is repetitious.

1 THE COURT: It is repetitious, counsel.

2 MS. SERTICH: Your Honor, I have not covered
3 this --

4 THE COURT: It is repetitious.

5 MS. SERTICH: -- with Mr. Funari, and I'm about to
6 be done.

7 THE COURT: It is repetitious.

8 MS. SERTICH: These defendants knew what was
9 happening and, contrary to their training, contrary to
10 common sense, contrary to basic human decency, did nothing
11 to stop Derek Chauvin or to help George Floyd. And you know
12 it because you've seen it.

13 In their custody was in their care. Not only was
14 George Floyd utterly unable to take care of himself, not
15 even able to lift himself in a position to draw the breaths
16 he needed to survive, but because these officers had their
17 badges and their guns and their power and their authority,
18 Mr. Floyd couldn't even count on the kindness of strangers,
19 the bystanders, who so easily saw the urgency of the
20 situation and who begged these defendants in desperation to
21 please stop the killing of this helpless man in their
22 custody and care.

23 They chose not to intervene. They chose not to
24 aid George Floyd, as the window in which Mr. Floyd's life
25 could have been saved slammed shut. This is a crime. The

1 defendants are guilty as charged.

2 Thank you for your time.

3 THE COURT: Members of the jury, we're going to
4 take a morning recess at this time. I would caution the
5 members of the jury not to discuss the case amongst
6 themselves or with other persons.

7 We are going to stand in recess now, so caution
8 the jury that while you've heard the summation of one of the
9 parties in the case, you have not heard the summation of the
10 other parties and I therefore caution you to continue to
11 keep an open mind.

12 With that, the jury may be excused.

13 **IN OPEN COURT**

14 **(JURY NOT PRESENT)**

15 THE COURT: Counsel, I stayed on. Ms. Magee just
16 handed me a note saying that the jurors' lunches are here.
17 I have no idea what they are having for lunch. I think
18 they're cold lunches, so I don't think it makes much
19 difference.

20 My suspicion is we should stay in recess for 10,
21 15 minutes and come back in and hear your argument,
22 Mr. Plunkett -- I'm sorry, I'm looking at Mr. Plunkett --
23 and hear your argument, Mr. Paule, but if there's a
24 compelling reason not to, we could put it over too.

25 MR. ROBERT PAULE: Your Honor, I don't really have

1 a preference. If the court would like me to go forward now
2 or if the court would like to have the jurors hear the
3 defense's arguments consecutive in the afternoon, I'm fine
4 either way.

5 THE COURT: Ballpark, what's your time?

6 MR. ROBERT PAULE: Hour, hour and a half.

7 THE COURT: Okay. Maybe we should take our noon
8 break at this time. Let's take a break until 12:30. We'll
9 take a one-hour break today and we'll come back at 12:30.
10 We'll have lunch and break now.

11 (Lunch recess taken at 11:32 a.m.)

12 * * * * *

13 (12:31 p.m.)

14 **IN OPEN COURT**

15 **(JURY PRESENT)**

16 THE COURT: Welcome back, everybody.

17 Mr. Paule, I'll recognize you for summation.

18 MR. ROBERT PAULE: Thank you, Your Honor.

19 May it please the court.

20 THE COURT: Proceed.

21 MR. ROBERT PAULE: Counsel for the government.

22 Mr. Kueng, Mr. Plunkett, Mr. Lane, and Mr. Gray and you, the
23 members of our jury. Good afternoon.

24 I again would like to begin my closing by
25 acknowledging the death of Mr. Floyd. This tragic event is

1 what brings us here today. The loss of Mr. Floyd's life,
2 like the loss of any human life, is a tragedy. However, a
3 tragedy is not a crime.

4 I'd also like to take the opportunity to thank
5 you, members of the jury, for your service, for the time
6 that we've taken out of your lives. You've had to put your
7 lives on pause to perform a civic duty, the long hours for a
8 nearly month-long trial. I'd like to thank you for your
9 time and your concentration and your sacrifice for being
10 here.

11 It's important to acknowledge also that the rule
12 of law must prevail, and what that means is in our society
13 when we have disputes, they must be decided in a court of
14 law. For these things to be decided out in the air of
15 public media and opinion, on TV, that's not the way we, as a
16 society, want to decide certain things.

17 As a brilliant legal mind once said, the rule of
18 law must prevail. And what that means is to decide an issue
19 as important as what we're doing here today, it must be done
20 in a courtroom with the rules of evidence and an independent
21 group of people who are picked to decide what has or has not
22 been proven, and that is your role as a jury in this case.

23 We talked about it at the outset. This is
24 obviously Judge Magnuson's courtroom. He is in charge of
25 this courtroom. He is what is referred to as a judge of the

1 law. Among his many duties, his job is to instruct you on
2 what the law is and what it is not.

3 You, as the jury, as a group are considered the
4 judges of the facts. And what that means is that you, as a
5 group, will decide what facts have been or have not been
6 proven in this courtroom. That is your role as a group as
7 the judges of the facts.

8 Your duty is to then take the facts as you decide
9 them and apply the law exactly as the court gives it to you
10 and render a just and true verdict, and it's important that
11 you are allowed to do this in an atmosphere that makes you
12 make your decision free from any sympathy or any bias.

13 Now, it's essentially the right to a jury trial
14 that sets our legal system in our country apart from
15 virtually any other. We are essentially the only legal
16 system that allows a group of citizens to come together with
17 no bias either way, no skin in the game to make a decision
18 what has and has not been proven, and that's one of the
19 cornerstones of our legal system.

20 I'm going to discuss also at this point sort of
21 three bedrock legal principles of criminal law, and these
22 principles used together will give you the framework that
23 you need to act in your proper function as a jury to analyze
24 the evidence in this case. The first principle I'm going to
25 talk about is the presumption of innocence.

1 Now, the court will give you -- I'd like to start
2 out by pointing out the court will give you legal
3 instructions. It's my understanding you will get a packet
4 of these instructions. You can bring them with you back to
5 the jury room.

6 And I want to point out at the outset if I in any
7 manner state the law which is different than what Judge
8 Magnuson gives it to you, you should disregard what I've
9 said about the law and rely solely on the law as he gives it
10 to you, because that is what is proper in this case.

11 But I want to talk to you about these three legal
12 principles, the first one being the presumption of
13 innocence.

14 My client in this case -- and, by the way, I'd
15 like to point out at this point I'm only going to talk about
16 one particular lawsuit, as the court puts it, because right
17 now in this courtroom you have three people standing trial,
18 but I only represent Mr. Thao and my comments should only be
19 taken in consideration of the case of the United States of
20 America vs. Tou Thao.

21 So in this case I'm going to talk about the
22 presumption of innocence. My client, like anyone in America
23 charged with a crime, is presumed to be innocent. And ask
24 yourselves: What does it really mean to be presumed to be
25 innocent? Well, it means many things, as I tell my clients.

1 It means, first of all, a jury has to presume your
2 innocence to every element and every aspect of the case.
3 Simply because the government has chosen to bring charges
4 against a person is of no import. Those are merely
5 allegations.

6 The jury's role is to presume that a person is
7 innocent of the charges against him. And as you will hear
8 Judge Magnuson tell you, the presumption of innocence alone
9 can be sufficient to justify a not guilty verdict.

10 Now, going to what I tell my clients, is when a
11 person is presumed to be innocent, it means many things. It
12 means again, first of all, the jury must look at you as if
13 you are innocent of these charges.

14 And that presumption of innocence maintains with
15 you and stays with you until the end of a trial when a jury,
16 acting as a group, comes to a decision that the government
17 has proven you guilty, it has overcome the presumption of
18 innocence.

19 But the presumption of innocence means much more
20 than that. It means that there is no burden whatsoever on a
21 defendant. He is under no duty to present any evidence
22 whatsoever. He is under no duty to call any witnesses.
23 He's not even under any duty to question the government's
24 witnesses. Because he is presumed to be innocent, the
25 burden of proof is entirely on the government.

1 The final thing about the presumption of
2 innocence, it means that my client is not under any duty to
3 testify at all. One of the constitutional rights guaranteed
4 everyone is the right to remain silent.

5 And how that comes into play in a court trial is
6 if a person exercises their right to remain silent, it means
7 they don't have to testify. That is part of the presumption
8 of innocence in this case.

9 So at the outset you, as a jury, must view my
10 client as innocent of these charges.

11 The second legal principle I want to talk about is
12 the burden of proof. In this case, like any criminal case,
13 the burden of proof is solely on the prosecution. Again,
14 the presumption of innocence stays with my client unless and
15 until the government can meet their burden of proof. In
16 other words, there is no duty for my client to prove his
17 innocence. Instead, the burden of proof is entirely on the
18 government, just like it is in every courtroom throughout
19 the United States of America.

20 The third concept I'd like to talk about is proof
21 beyond a reasonable doubt. And let me rephrase that so you
22 can be very clear about how I'm discussing this and what I
23 am saying. The phrase is "proof beyond a reasonable doubt."

24 Now, the court in its instructions to you will
25 give you the definition of what "proof beyond a reasonable

1 doubt" is. And I'm not going to go over that when I talk
2 about these principles. Instead, I'm going to talk about
3 the concept of proof beyond a reasonable doubt or, as I like
4 to refer to it when I'm speaking to my clients, proof beyond
5 all reasonable doubt.

6 Now, what you will hear in the instructions on
7 proof beyond a reasonable doubt is that it does not mean
8 beyond all possibility of doubt. It simply means proof to a
9 point where there is no reasonable doubt.

10 And this is where you, as a jury, we want you to
11 bring your reason and common sense into the equation. We
12 selected you because presumably we thought, A, you were
13 neutral, but, two, that you were reasonable people and
14 possessed the common sense that we want in people to make
15 decisions in a case like this.

16 But what proof beyond all reasonable doubt means,
17 at least to me in a concept -- and, again, if this is in any
18 way different than what Judge Magnuson tells you the law is,
19 please disregard what I say because I'm talking about the
20 concept.

21 Proof beyond all reasonable doubt means just that.
22 It means proof to a point where at the end of the case there
23 is no rational, reasonable, logical explanation for what the
24 evidence is in court other than a person is guilty.

25 At one point in my career I was arguing that same

1 point and I was objected to by the prosecutor, and the
2 prosecution's objection was that they don't have to prove it
3 beyond all reasonable doubt, they only had to prove it
4 beyond a reasonable doubt. And upon expressing that, the
5 prosecutor quickly realized: What am I saying? Mr. Paule
6 is right.

7 So the burden on the government in this case is to
8 prove their case to a point called proof beyond a reasonable
9 doubt. And, again, follow the judge's instructions on that.
10 But that means the burden of proof is on them to prove the
11 charges against my client, and in this case there are two.

12 He is charged with violating the United States
13 Constitution in two fashions. One is Count 2, which is a
14 failure to intervene. In other words, he violated his duty
15 to intervene when he's confronted with unreasonable force.
16 The allegations are that the force used by then Officer
17 Chauvin was unreasonable under the circumstances and my
18 client failed to intervene. That is Count 2.

19 Count 3 is an entirely different function.
20 Count 3 alleges that my client violated the Constitution by
21 exercising or using deliberate indifference to Mr. Floyd's
22 serious medical needs.

23 And if you think about both of these charges, my
24 client isn't really charged with doing anything. He's
25 charged with the exact opposite. He's charged with not

1 doing something.

2 And the important thing for you, at least in my
3 thought process in terms of your analysis, is I think it's
4 pretty clear what my client did do. I think the evidence in
5 this case is relatively clear.

6 As sort of the use of technology has changed, we
7 oftentimes have video footage or recordings or much more
8 forensic evidence than we used to have. And this case
9 provides perhaps the clearest example of that in the sense
10 that we have a tremendous amount of video which shows what
11 did or did not happen.

12 And at least my position is I think that it's
13 pretty clear what did or didn't happen. But the important
14 question for you to consider is why because, again, what the
15 government has to prove isn't just, A, as to Count 3, that
16 my client was deliberately indifferent to the serious
17 medical needs of Mr. Floyd, but that he had what's called a
18 specific intent to do so.

19 And let me explain this. What the government
20 needs to prove isn't just that Mr. Floyd had a medical need.
21 It's that Mr. Floyd had a serious medical need that would be
22 obvious to people, recognizable. That also takes into
23 account the particular facts and circumstances, which I will
24 talk about later.

25 But, again, what they need to prove is they need

1 to prove he had serious medical needs. And then the
2 government needs to prove that my client was not only aware
3 of those serious medical needs, but that he chose to be
4 indifferent to them.

5 And if you look at the charge itself, it requires
6 not just indifference; it requires something called
7 deliberate indifference. And "deliberate indifference"
8 means, at least to me, that you recognize that there is a
9 serious medical need and you choose not to act and you do so
10 deliberately.

11 But if you look at what the elements of this are,
12 not only is the government required to prove that and prove
13 that beyond all reasonable doubt, but they also have to meet
14 the additional element of willfulness.

15 And if we could put up on the screen -- you will
16 get, again, a copy of the definition of "willfulness" in
17 your instructions, but the important word is the word
18 "willfully" or "willfulness."

19 And if you look at what this says, it says,
20 "Willfulness. A person acts willfully when they commit an
21 act with a bad purpose or an improper motive."

22 In other words, getting to my argument about this
23 deliberate indifference count, they not only have to prove
24 that Mr. Floyd had a serious medical need, but that my
25 client was aware of it, that he chose to be indifferent,

1 that he chose so deliberately and that he did so with this
2 element of willfulness, which means not only do you say,
3 well, maybe I'm just going to choose to be indifferent and
4 not just indifferent but deliberately, but I have to possess
5 the specific intent of violating the law.

6 Now, when we talk about what the law is with
7 regard to this element of willfulness, it's essentially to
8 violate the Constitution. And as you will find out, a
9 person doesn't need to be specifically aware that they're
10 violating the Constitution, just that they are breaking the
11 law. That is what willfulness needs and they need to
12 establish.

13 Now, with regard to Count 2, the failure to
14 intervene, again, it requires a number of steps and the
15 government has to prove all of these steps beyond a
16 reasonable doubt.

17 They have to prove, first of all, that Mr. Chauvin
18 was using unreasonable force. And that unreasonable force
19 has to be what's called objectively unreasonable force, and
20 what that means is not just is it unreasonable, but a
21 reasonable person or an objective person would decide that
22 that is unreasonable force.

23 And then knowing that, the person has to, A, have
24 a duty to intervene, which I'm not contending that then
25 Officer Thao did not have. He was a sworn officer. They

1 have a duty to intervene if they see unreasonable force
2 being used. But they have to fail to act upon that duty.
3 And, again, this requires a very specific intent. I'll
4 explain to you a little bit about intent versus specific
5 intent.

6 If you think about it in general terms, let's say
7 I take pills every day, a number of pills. I have one of
8 those nice little weekly things with my pills in it. At the
9 end of a week I say I need to get more pills or I need to
10 fill up my thing. I make a point of filling up my pill
11 container so I can take those pills every day. I am doing
12 an intentional act to do that.

13 But my purpose in doing that intentional act is to
14 take those pills so that I can theoretically be a healthy
15 person. I not only intend to take the pills, but my
16 specific intent is to make myself healthier.

17 In this case what the government has to prove with
18 the failure to intervene charge is the specific intent of
19 willfulness, which, again, means that not only is my client
20 accused of failing to intervene when there's
21 reasonably -- excuse me, objectively unreasonable force, but
22 that my client did so with the specific purpose of
23 willfulness, which means a bad purpose or an improper
24 motive. This is what the government needs to prove beyond a
25 reasonable doubt.

1 If we could now take that down.

2 What this means in some sense is that even if you,
3 as a jury, once you've decided the facts, come to the
4 conclusion that perhaps Mr. Thao's actions weren't the right
5 course of action, they still must be done with the specific
6 purpose of a bad purpose or an improper motive. In other
7 words, I'm not only choosing to take the actions that I'm
8 doing, or the inactions, but that I'm doing so to
9 specifically violate the law. That is what the charges are
10 against my client and that is what is required of the
11 government to prove.

12 Now, let's look back to the actions of May 25th,
13 2020, Memorial Day. It was a Monday about 8:00 p.m. At that
14 time of day my client was partnered with Officer Chauvin for
15 the day, and the two of them were back at the Third Precinct
16 having their lunch break. It's an odd time to have lunch,
17 but if you are working middle watch, that makes sense.

18 They're at the Third Precinct when they receive a
19 dispatch requesting them to respond to Cup Foods, which is
20 located at 38th and Chicago. The information provided to
21 them was that someone was trying to pass a counterfeit bill
22 or a forgery; two, that the suspect was still on the scene,
23 which turns this into what's called a priority call, if you
24 remember that, because if the suspect's still on the scene,
25 they want officers to respond quickly so they can

1 theoretically detain that person and investigate the
2 situation; and, third, that the person was under the
3 influence of either drugs or alcohol. That's what these
4 officers knew when they were sitting there having lunch.

5 So they get into the car and as you can see from
6 my client's body camera footage -- and, again, as an aside,
7 if you look at my client's body footage, there are actually
8 four separate videos.

9 The first one shows the initial response when the
10 car was leaving the Third Precinct. You can see the lights
11 and siren sounds bouncing off things. And then you can see
12 them going slow and talking.

13 And the second video is the one that starts when
14 they are arriving at the scene of Cup Foods, but in this
15 first video you can see that my client and Officer Chauvin
16 are responding Code 3. They're responding lights and sirens
17 to that specific dispatch. All right?

18 And think about this. The next thing they know is
19 that Squad 320, which is the squad with the two rookie
20 officers, Officers Kueng and Lane, responds because the call
21 at Cup Foods was in their particular sector and they should
22 be responding within their sector to calls. So they
23 essentially take over the call and then they arrive at Cup
24 Foods and they call out a Code 4, which means the scene is
25 safe.

1 Instead of turning around and going back to the
2 Third Precinct to have their lunch, they continued on.
3 Think about how Mr. Thao's life would have been different if
4 he just decided to go back and have his lunch.

5 But instead they continue to respond to the scene
6 to provide backup for the other officers. And think about
7 the evidence you've heard about which car theoretically is
8 assigned to a scene and who is in charge.

9 But they go there to provide backup to the
10 officers in Squad 320. And why do they do that? Because,
11 one, it's a couple of rookies who have been paired together.
12 Secondly, this is the area you heard my client or you --
13 when you listen to the video, the first one of the four on
14 his body cam, you can hear him say, "This is Bloods
15 territory." Again, he's referring to a specific Minneapolis
16 street gang that's sort of headquartered in that area.

17 But the idea is that this is an area that might be
18 a little more hostile to police than perhaps other areas,
19 and my client expressed concern because he didn't know that
20 the rookies would necessarily be aware of that.

21 And then as they're on their way they hear, I
22 believe -- and, again, this is an important concept.
23 Lawyers can spend hours, days, even months analyzing a case
24 and figuring out what we think the evidence is. That's true
25 of me in the case of United States vs. Thao, but it's also

1 true of the government with all of their lawyers. You get
2 to decide what the facts really are. So if my recollection
3 of the facts is different than what you as a jury think, go
4 with your recollection of the facts.

5 But my recollection of the facts is they receive
6 word that they're taking one out, which means a police
7 officer is removing someone from a car, and then there's
8 some sort of indication of a struggle. And I'm not sure
9 whether this comes from dispatch or whether it's what my
10 client overheard. But they continue to go there to provide
11 backup to these other two officers.

12 Now, when they arrive on the scene, as you see
13 them pull up you will see them coming to Cup Foods to
14 Chicago Avenue heading west on 38th Street. And as they
15 cross over Elliot, which is the street one block east of
16 Chicago Avenue, on 38th Street they pull over to the
17 left-hand side of the road.

18 The left-hand side of the road is where the blue
19 Mercedes SUV is. It's also where Officer Chang, the
20 Minneapolis Park Police officer, has parked his vehicle,
21 because Officer Chang has likewise responded to the call for
22 backup that there may be a struggle.

23 And as my client and Officer Chauvin pull up to
24 the left-hand side, you heard my client testify that he did
25 so because he could see Officer Chang out with two people,

1 so there's a numeric disadvantage.

2 But then you will hear and you will see on the
3 body camera the car then go to the right to the north side
4 of 38th Street and park just east of Chicago Avenue, and
5 that's sort of when the sound clicks in on my client's body
6 camera on that second round of footage on his body cam.

7 But you will see in that Officer Chauvin gets out
8 first, and Officer Chauvin is walking ahead of my client and
9 arrives at Squad 320 first. And when my client actually
10 arrives at Squad 320, Officer Chauvin is already over on the
11 far side of Squad 320. So my client is observing, as he
12 walks up, Officer Kueng struggling with George Floyd, who is
13 in handcuffs.

14 And, again, an important thing to keep in mind is
15 that you must judge the actions of my client, Officer Thao,
16 based on what the facts and circumstances were known to him
17 at the time.

18 The law in this case talks about, you know, you
19 shouldn't look at the actions of an officer in 20/20
20 hindsight. You have to, to be fair, look at them from what
21 my client knew at the time he was doing it.

22 Now, when my client arrives, he doesn't know much
23 about what has already occurred. The interactions with
24 Officer Lane and Officer Kueng over at the side of the
25 Mercedes SUV after Mr. Floyd was removed from the car, the

1 struggle that occurred between Officer Lane and Mr. Floyd
2 and then joined by Officer Kueng, who helped to handcuff
3 him, and then walking Mr. Floyd over and having him seated
4 by the side of the Dragon Wok restaurant and then escorted
5 over to Squad 320 in front of Cup Foods, my client doesn't
6 know those things.

7 What he knows when he's arriving is Officer Kueng
8 is struggling with a handcuffed man, who is a large man, and
9 this person is resisting getting in the back of the car.
10 That is what's referred to as active resistance.

11 And you can -- you heard my client testify about
12 this, that, A, he didn't physically touch Mr. Floyd at this
13 time, that he actually never touched Mr. Floyd during the
14 entirety of this event, but that he's observing as Officer
15 Kueng is trying to place Mr. Floyd in the back of the car
16 for sort of reasons unknown to my client.

17 And what does he observe as he's doing this? He
18 can see Officer Kueng shoving and he can see Mr. Floyd
19 stiffening up, which makes it difficult to place him in the
20 back of the car, but there's a struggle and you can see on
21 his body cam he's looking around trying to see what's going
22 on.

23 You can see at one point Officer Kueng putting his
24 forearm sort of up against Mr. Floyd's chest, upper chest
25 area, and it may well have been moving up to his neck, but

1 at that point my client can see and hear Mr. Floyd say, "I
2 can't breathe."

3 And think about that, because at that point my
4 client doesn't know what's gone on before this. And there's
5 nothing that would inhibit Mr. Floyd's breathing at that
6 point. His testimony was that Mr. -- excuse me, Officer
7 Kueng's arm was sort of in the upper chest area. That is
8 not going to cause somebody to not be able to breathe.

9 Think back to what my client testified about his
10 own experience with people who are going into custody or in
11 custody claiming that they can't breathe under circumstances
12 where clearly they should be able to breathe.

13 At that point then Mr. Floyd ends up inside the
14 car. I believe -- and you as the jury get to determine
15 this -- that Officer Lane may have gone around and helped
16 pull Mr. Floyd into the car.

17 And then he sees Mr. Floyd sort of eject himself,
18 even while he's handcuffed with his hands behind his back,
19 out of Squad 320 and onto essentially Chicago Avenue on the
20 passenger side of the vehicle.

21 My client then goes around the vehicle. And you
22 will see from his body camera footage that as he goes around
23 the vehicle, Officer Kueng has gone around the vehicle
24 first. And when he goes around the corner, he can see
25 Officers Kueng, Chauvin, and Lane engaged in a struggle with

1 Mr. Floyd.

2 And think about this. You've got one person who
3 is handcuffed with his hands behind his back who is actively
4 resisting, who is trying not to go in the squad car and is
5 not listening to commands by the police officers to get in
6 the car. Yet that one person is able to sort of out-muscle
7 or overpower those three officers.

8 My client then goes back around to the driver's
9 side of Squad 320 and opens the door up, standing there, I
10 think, waiting to assist the other officers when they put
11 Mr. Floyd in the back of the car to act, as he described it,
12 as a puller, to help pull Mr. Floyd back in the car.

13 And you see on his body camera footage at this
14 point Officer Chauvin has taken over command of the struggle
15 and you will again see Mr. Floyd saying, "I can't breathe."
16 And I'll leave it up to you to decide what the evidence is,
17 but at some point you can see Officer Chauvin behind
18 Mr. Floyd with his arm around, and it's not around his neck,
19 it's lower down, but Mr. Floyd is again saying, "I can't
20 breathe." Are those circumstances that would lead you to
21 believe that he reasonably couldn't breathe or maybe is he
22 doing something else, feigning, exaggerating for whatever
23 purpose?

24 But at that point, then they sort of all end up
25 outside of the squad. And my client will close the squad

1 door on the driver's side and he goes around the side of the
2 car.

3 And if you listen to his body camera, that's when
4 he makes the phrase about hog-tieing or something like that,
5 because what he testified to is he tries to almost narrate
6 to use the body camera as a means of sort of recording or
7 providing some sort of memorialization of what he was
8 thinking and why.

9 And he testified that he was thinking that because
10 you've got three officers that can't control someone. And
11 he's also thinking, as he testified, there's a limited
12 amount of time when people can physically struggle. It sort
13 of becomes a point where they're exhausted.

14 So as he's walking around the side of 320 to go
15 back again where the other three officers and Mr. Floyd are,
16 he's already coming to the conclusion that what they're
17 doing isn't working. And think about that; three officers
18 are not able to control a person in handcuffs.

19 So when he gets around to the side of the car, he
20 can see them struggling. He can hear Mr. Floyd saying,
21 "Just put me on the grouped." So my client says to himself
22 this is pointless and he says, "Let's just put him on the
23 ground." At that point Mr. Floyd is put to the ground.

24 Now, as an aside, in my opening statement I talked
25 about the use of force. I talked about how the use of force

1 is sometimes difficult to watch. And think about some of
2 the evidence we've had in this case about the use of force,
3 including some of those restraint videos from 2017 where the
4 recruits are being taught to try to take down a person who
5 is wearing a padded suit. Even in that controlled
6 environment, the use of force is difficult to watch, it is
7 violent, it is graphic, and it is up close and personal.
8 And use of force is not only difficult to watch at times,
9 but it can be difficult to comprehend what is going on and
10 why.

11 Now, getting back to this instance, Mr. Floyd is
12 put on the ground and you can see the other three officers
13 go down with him, Officer Chauvin by his head area, Officer
14 Kueng near his derriere, as I think it's been called, and
15 Officer Lane at his feet. And at this point you hear a
16 discussion about a hobble or what's called an MRT.

17 Now, just to be clear, the MRT is a maximum
18 restraint technique. It is essentially where you use a
19 hobble or a strap to wrap around a person's ankles.

20 And I believe since the Freddie Gray case that we
21 heard some testimony about where a person was injured and
22 died in the back of a police van when they were hobbled, the
23 Minneapolis Police Department policy has changed where now
24 they want to use two hobbles, one to wrap around a person's
25 ankle, the second is to tie that hobble, the first one, to

1 the belt loop or the belt independent of the handcuffs. But
2 the idea is to put a person in a position where they can
3 struggle, but they're just struggling against themselves.

4 So there's a discussion about that. And then my
5 client goes to the back of Squad 320, because he's standing
6 right there, opens up the rear hatch and begins looking
7 through two black bags. These are what are referred to
8 oftentimes as duty bags for the officers. They keep things
9 that they think they may have to use in those bags.

10 Now, Ms. Sertich and the government during the
11 course of this trial has tried to claim that my client spent
12 the first six minutes standing there staring at Mr. Floyd
13 and what was going on.

14 In my humble opinion, they're playing sort of fast
15 and loose with the facts, because you can see my client go
16 around to the back of Squad 320 and search purposely for a
17 hobble in the back of the car.

18 Are we able to turn that off? Thank you.

19 And he can't find one in the first bag, which I
20 think you realize is Officer Kueng's bag, so he goes over to
21 the second bag. And you can hear Officer Lane saying, "I've
22 got one in my bag." And when he flips it up, sure enough,
23 you can see it says, "Hobble," so he grabs the strap out of
24 there.

25 Notice, if you will, where my client's attention

1 is. Because if you look from his body camera footage, you
2 will see a reflection and you can see my client. And this
3 is obvious; he's looking in the bag for the hobble.

4 So he gets out this hobble device, this strap, and
5 goes back around to the side of the car and gives it to
6 Officer Chauvin. Officer Chauvin then gives it to Officer
7 Lane. I'm not sure if Mr. Kueng handled it. I'll let you
8 guys figure that out. But there's then a discussion about
9 whether we should be applying the hobble.

10 Now, what we know is if the hobble is applied,
11 then Mr. Floyd is not needed to be held in that prone
12 position. But the discussion of the hobble -- and just as
13 an aside, the way the arguments are set up procedurally is
14 that the government gets to go first with their closing
15 argument. Then I, on behalf of my client, I'm entitled to
16 give a closing. And then the government is afforded a
17 rebuttal, so sort of a second closing argument,
18 theoretically to just try to rebut the things that I've
19 said.

20 So they may talk about this and they may try to
21 direct your attention to the fact that my client said if we
22 put a hobble on, we'll have to get a sergeant out. And this
23 is -- you could attribute that statement to a number of
24 different things.

25 One, it could be, as the government no likely will

1 try to point out, that my client was just simply being lazy.
2 We have to get a sergeant out here. We have to explain all
3 this.

4 But the reality is when police officers use force,
5 under Minneapolis policy they have to have a sergeant come
6 out and review that use of force -- you heard my client
7 testify about we'll have to take pictures, because he's had
8 that happen -- and look at the hobble.

9 Now, putting that aside, my client also knows at
10 this point that EMS has been called. And if you recall, at
11 this point EMS has been called Code 2. And what that means
12 is respond directly, but you don't need to use your lights,
13 you don't need to use the siren, you don't need to run.
14 Just get here as quickly as possible. So he already knows
15 EMS is on the way.

16 And what does he also know at this point? You
17 heard my client testify that in his interactions with
18 Mr. Floyd, he believed him to be high or under the influence
19 of drugs. And if that is indeed the case, if somebody is
20 under the influence of drugs, then it becomes a medical
21 issue. And since EMS is on their way, they're going to have
22 to decide that.

23 Now, as an aside, I would point out that if you
24 think about the four people who have come into this
25 courtroom and testified who directly interacted with

1 Mr. Floyd on May 25th, all of them suspected that Mr. Floyd
2 was under the influence of drugs.

3 First of all, Chris Martin, the young employee
4 from Cup Foods. He was the person that took the counterfeit
5 bill from George Floyd. And he indicated that he held it up
6 and he didn't know what to do, and he thought George Floyd
7 might be so high that he didn't realize he'd passed a
8 counterfeit bill.

9 But then he went out and interacted with him, not
10 once, but twice, as he was trying, at the direction of his
11 manager of the store, to bring Mr. Floyd back in to deal
12 with the situation of the counterfeit bill. And when they
13 called 911, he was standing right there and heard the person
14 say we think he's under the influence of something.

15 Now, think back to what Mr. Martin said when he
16 testified early, early on in this case. When he was talking
17 with him, he felt that Mr. Floyd was high. He said he was
18 reacting slowly to some of the words and had difficulty
19 forming the word I think it was baseball. But his direct
20 impression, as he testified to, was that George Floyd was
21 high or under the influence of drugs.

22 The second person who interacted with Mr. Floyd
23 was Officer Lane. Officer Lane's testimony is that he, too,
24 believed that Mr. Floyd was under the influence of drugs.
25 You heard him asking have you been taking drugs, something

1 like that, and going over to talk to Shawanda Hill and
2 Morris Hall, who were the two other occupants of the blue
3 SUV, asking them what's going on with him, why is he
4 behaving like this.

5 And then when he goes over and they pick him up
6 and start escorting him across the street when he's asking
7 him about has he be doing drugs, well, first of all, George
8 Floyd denied that, which we now know was false. And second
9 of all, if you listen to it, George Floyd says, "I was
10 hoopin' earlier." And, again, I brought that up in my
11 opening statement and told you to pay attention to that.
12 Hoopin', as we now know, can be used to describe when
13 someone is taking drugs rectally.

14 Then you look at Officer Kueng. Officer Kueng
15 came over to help handcuff Mr. Floyd and walk Mr. Floyd over
16 to the Dragon Wok. He said on the way there Mr. Floyd
17 dropped down or sort of fell down, not once, but twice,
18 which could be indicative of somebody on drugs. He too
19 noticed the erratic behavior of Mr. Floyd and he was asking
20 him, "Are you on something?" He also noticed foam around
21 his mouth.

22 And think to the inside of Squad 320 when it would
23 be the special agent from the BCA, McKenzie Anderson,
24 testified. She was the person from the BCA crime scene team
25 who came out and documented what was inside both the blue

1 SUV and the Squad 320. And she documented a number of blood
2 stains in the rear of Squad 320, including one high up sort
3 of on the seat right by the passenger side door.

4 And do you remember looking at that and her
5 making -- her agreeing with my comment that that could be
6 consistent with somebody who is bleeding out of their nose,
7 having their face pushed up against it? Because it looks
8 like there's a nose print and two what could be lips.

9 And then right off to the side of it was some
10 white residue that was never tested. That would also
11 confirm the foam around the mouth, assuming that hypothesis
12 is correct.

13 So you have Officers Lane and Kueng and Chris
14 Martin all believing that George Floyd is high on drugs, and
15 then you have my client. And my client, going back to the
16 point where Mr. Floyd is down on the ground, they're trying
17 to figure out what to do, do you remember my client saying,
18 "What are you on?" At that point then my client starts
19 asking, "We have EMS started, correct?" What are we -- and
20 I'll leave this up to you, but it's my recollection that
21 Mr. Lane, then Officer Lane, said, "We've got EMS coming,"
22 which is the paramedics, "Code 2."

23 And then there's a suggestion of stepping it up to
24 Code 3, and then my client called into dispatch on his radio
25 to step up EMS's response to Code 3. They didn't do that

1 for a bad purpose. They did that to get EMS there quicker,
2 because they realized that at this point they had some sort
3 of a medical situation developing.

4 And when you have somebody who is -- who you're
5 detaining who is in some sort of a medical situation, that
6 has to be dealt with by medical people, like EMS. So at
7 this point my client knows they're not going to put him in
8 the back of the squad and bring him to the jail; they're
9 going to hold him until EMS shows up.

10 Now, I would also point out a couple things. One
11 is, again, and I'm not trying to demean Mr. Floyd in any
12 way, but Mr. Floyd clearly wasn't being honest when he said
13 he wasn't on drugs. We now know he was on drugs for a
14 couple different reasons.

15 One is the toxicology results that Dr. Baker and
16 others have talked about. He had both methamphetamine and
17 fentanyl in his system.

18 Secondly, the second search of the Mercedes SUV
19 resulted in the discovery of two pills that were in the
20 center console, both of which were tested, both of which
21 were determined to have both methamphetamine and fentanyl as
22 what was in them.

23 And then you've got the search of Squad 320, the
24 second search, that turned up the little white pill down on
25 the floor by that center barrier and some other pill

1 fragments that had been left during the course of the first
2 search. And we know that that pill, the round pill, whether
3 it was whole or not, down on the floor of Squad 320
4 contained methamphetamine and fentanyl.

5 And additionally we know that that pill was
6 actually tested, determined to have George Floyd's saliva on
7 it and George Floyd's DNA. So that would lead a reasonable
8 person, using their common sense, to believe that that came
9 from George Floyd's mouth.

10 So we know that, in fact, he was having narcotics
11 in his system. That is consistent with the observations of
12 all four of these people.

13 Now, you heard testimony about excited delirium,
14 and I'd like to talk to you about that, because, if you
15 recall, all three of the officers, independently and perhaps
16 for different reasons, came to the conclusion, at least to
17 them, that they believed Mr. Floyd was in excited delirium
18 syndrome.

19 As an aside, let's step back. We know that Derek
20 Smith said, when he was questioned, that based on what he
21 knew about the call, he suspected that there may be excited
22 delirium.

23 And when I talked to him about excited delirium,
24 he said, yes, this isn't something that a lawyer made up.
25 This is something that he's seen that he's interacted with

1 with people in his job as a paramedic.

2 You also heard testimony from Dr. Langenfeld.
3 He's the emergency room doctor that attempted to revive
4 George Floyd at HCMC. He's seen people in excited delirium.

5 You heard Dr. Baker say that he's dealt with
6 excited delirium, he's familiar with it, and he's actually
7 certified as a cause of death excited delirium.

8 This is not something that's made up. It's
9 historical. It goes back to different things referred to as
10 Bell's mania, agitated delirium, all kinds of things. It is
11 a concept that has much conflict about whether or not it's a
12 real syndrome or what it is, but you know that it's not
13 something that's made up and you know that my client and the
14 other officers were trained on it.

15 And if you look at it, all three of the officers
16 came to their own independent conclusion that Mr. Floyd
17 might be in the throes of excited delirium and that's what
18 they were trying to deal with here.

19 What do we know about why that was? My client
20 testified that, in his observations of Mr. Floyd, that
21 Mr. Floyd was sweating profusely, and this is when he's
22 arriving at the car before he's gone over to the far side;
23 that Mr. Floyd was agitated and not following instructions.

24 He believed that George Floyd was under the
25 influence of drugs. I believe his testimony was it was

1 obvious he was high; and, secondly, he said that he heard
2 George Floyd say, "I ate too many drugs" when he's down on
3 the ground on the side of Squad 320.

4 Also his testimony was that this was the most
5 violent struggle he's ever seen with somebody in handcuffs.
6 And think about this. You've got a person with his hands
7 handcuffed behind his back, which limits the use of his
8 arms, yet that person was able to physically resist not one,
9 not two, but three officers who were trying to get him in
10 the back of the car. These are officers who are trained at
11 things like pain compliance, various techniques to do this,
12 and yet they couldn't get him in the back of the car and
13 contain him in there. That goes to the idea of super-human
14 strength.

15 And if you look at the other three officers and
16 what their testimony is, why they believe this, if you look
17 at Officer Kueng, he testified that, A, he believed George
18 Floyd was on drugs; B, that George Floyd was foaming at the
19 mouth; C, that he was sweating profusely; D or four, that he
20 had an attraction to glass. You heard Officer Kueng testify
21 about George Floyd striking his face on the glass partition,
22 not once, but twice. And then, third, that he was -- excuse
23 me, fifth, that he was exhibiting super-human strength in
24 terms of his ability to resist being put in the car and his
25 resistance on the ground.

1 Officer Lane also testified, and you actually hear
2 him say that when he's on the scene, "I'm worried about the
3 excited delirium or whatever." Well, maybe he's just making
4 it up, but let's look at the objective reasons he may well
5 have believed that.

6 I believe Officer Lane testified, apart from
7 his excited -- excuse me, his comment about the excited
8 delirium on the video, that he believed that Mr. Floyd was
9 on drugs, and you can see that from his earlier comments
10 going back as far the Dragon Wok; that Mr. Floyd was
11 sweating profusely; that he had a very strong, super-human
12 almost level strength; and I don't want to put my
13 descriptive words on that, but he described Mr. Floyd as not
14 being able to come under control, they weren't able to put
15 him in the side of the squad; and that also that he had
16 banged his face on the glass partition.

17 And if you think about this, you think about the
18 training the officers received, that NOTACRIME, I'd like to
19 go through some of those. And I have to step away from the
20 microphone, so I'll speak loudly for our court reporter, but
21 I'd like to put some things up here to see whether or not
22 the officers' beliefs or understandings are actually borne
23 out by the training they received.

24 Now, what I'm going to do is I'm going to refer to
25 Exhibit T-12. There's another exhibit number, but it's the

1 PowerPoint presentation that was given at the Minneapolis
2 Police Department in terms of training, both at the police
3 academy and as well in the in-service training.

4 You heard Inspector Blackwell talk about this and
5 you heard them use the word "NOTACRIME." It's an acronym or
6 a group of symbols to allow people to remember this in
7 situations.

8 And if you look at slide 16, it says, "NOTACRIME
9 is a pneumatic used to remember specific clues or behaviors
10 we," training police officers, "can use to identify excited
11 delirium syndrome subjects."

12 And then 17 just has a video.

13 But then slide 18, the first one is "N." "Patient
14 is naked and sweating." And it shows one of the videos you
15 could see of a person that was naked. Now, the government
16 has taken pains to point out that George Floyd wasn't naked,
17 and I'm not claiming he was. First of all, he's in
18 handcuffs. He can't take off his clothes. But "N" stands
19 for is naked and sweating. Think about the testimony from
20 all three officers about Mr. Floyd sweating profusely.

21 Going then to slide 20, the "O." "Not," n-o.
22 "Patient exhibits violence against objects." And if you
23 think about the second bullet point there, high likelihood
24 that glass is targeted. The glass partition in between the
25 front and back seats of Squad 320.

1 Then there's another video, which we won't show
2 you again.

3 The "T" stands for "Patient is tough and
4 unstoppable." Three officers not able to control a person
5 in handcuffs such that they can even put him in the back of
6 the squad.

7 "A" for NOTACRIME, the onset is acute, which means
8 it can happen right away.

9 Now, one of the things the government has pointed
10 out was that there was no information in dispatch about the
11 officers coming to an emotionally disturbed person or people
12 reporting something, but that doesn't mean that it can't
13 happen, just because it's not reported.

14 And we have another video, which we won't show you
15 again.

16 "C" stands for "Patient is confused." I would
17 point out that although Mr. Floyd seemed agitated, it did
18 not appear to me that he was confused because he was able to
19 respond to questions. It appeared to me he was responding
20 to Mr. McMillian's questions and not following the police
21 commands, but I'm not arguing he was confused.

22 "R: Patient is resistant. Handcuffing and
23 hobbles will take multiple officers." Isn't that really
24 what we're watching here? And if you will see in the
25 comment to this -- and, again, this is how my client was

1 trained -- "MPD blue hog pile." They are talking about ways
2 to control a person who is suspected to be in excited
3 delirium.

4 "I" for NOTACRIME stands for "Patient's speech is
5 incoherent." I don't know that Mr. Floyd's speech was
6 incoherent. But they also say, "Do not rely on information
7 they give you to be accurate." I'm not on drugs. I'm not
8 that guy. Was that really accurate?

9 "M" of NOTACRIME stands for mental health. Any
10 behavior that seems to be out of the ordinary, and then it
11 can be anything you observe from the scene. In other words,
12 you don't have to rely on preexisting information. It can
13 be things you as an officer observe.

14 And then "E: EMS should be requested early."
15 What did the officers already have in this case? They had
16 EMS being already requested and now they're stepping it up.

17 And then going on to infamous slide number 31. I
18 can show you at the bottom here. There we go. And this is
19 the slide that was used in training that shows a person
20 being put down who is suspected of being in excited
21 delirium, at least for purposes of this drill, with the knee
22 on his neck.

23 Now, this, of course, is the only slide in that
24 PowerPoint that talks about placing the subject in the
25 recovery position.

1 You would also note in the comments that it said,
2 "You may need to have one officer ride along with the
3 subject if there is a chance they could become violent."
4 Why do you suppose they are training officers this? Because
5 obviously there have been recorded instances of people who
6 would appear to be under control who suddenly become violent
7 and fight again.

8 Now, if you go to that training and you think
9 about what all three of those officers said, again, all
10 three officers come to the same conclusion, rightly or
11 wrongly, but at least it is based on their training and not
12 something they're just grabbing out of the blue. And
13 Officer Lane was verbalizing this at the scene.

14 Now, again at this point my client asks that EMS
15 be stepped up to Code 3. And he testified that he would
16 expect them, if they're responding from Hennepin County
17 Medical Center to 38th and Chicago, that it would take
18 approximately five to six minutes for them to get there.

19 So at this point they decide that they're not
20 going to use the restraint, again, for two reasons. One is
21 that potentially Mr. Floyd is in a drug ingestion or an
22 overdose that's going to need to be assessed for that and it
23 becomes a medical issue because you don't bring people who
24 may well be having a drug reaction issue to jail without
25 giving them medical attention first; and the second, the

1 police officers suspected that Mr. Floyd was in excited
2 delirium.

3 Now, going, then, to analyzing my client's actions
4 from a perspective of what he knew, this is what he was
5 dealing with.

6 Now, look at my client's training. Again,
7 basically what they train Minneapolis police officers to do
8 specifically with people in excited delirium is to get them
9 under control and await the arrival of emergency medical
10 services. These are the paramedics that you've heard about
11 that come out and sedate people.

12 Secondly, look at my client, who has
13 independent experience and training dealing with people in
14 excited delirium. You will remember that when he was laid
15 off following the recession in 2009, that he went to work at
16 Fairview Riverside Hospital as security. And in that role
17 he didn't receive any training about excited delirium, but
18 he was repeatedly called on to restrain people who were
19 severely agitated or potentially in excited delirium at the
20 behest of medical personnel, nurses and doctors. And his
21 role was to restrain them, as he testified, people using
22 knees, multiple people on them, so they could be sedated for
23 their own well-being.

24 And then look at essentially my client's
25 additional experience with excited delirium, because he's

1 been a police officer for a period of time. He testified
2 that he's dealt with people who he suspected of being in
3 excited delirium approximately 30 times over the course of
4 his career. And with regard to that, the training, if you
5 look at it from the department, is to restrain that person
6 until EMS shows up.

7 Now, let's shift focus to the training, because
8 you heard Inspector Blackwell come in here and testify we do
9 not train people to put knees on neck in Minneapolis, that's
10 not something we authorize. We also know that's probably
11 not accurate at this point.

12 All right. We know that neck restraints are
13 allowed. And even using your leg to do a neck restraint on
14 somebody is allowed per policy, even though there's no
15 training on this.

16 Now, if we look at Inspector Blackwell, she
17 testified that when she became head of the training
18 division -- she was promoted to lieutenant -- she became
19 head of the training division, she reviewed all the training
20 herself. She reviewed it and previewed it with command
21 staff, including the chief of police, to make sure his
22 vision was in there. And her testimony was they didn't use
23 knees on neck.

24 Now, I won't go back and relive all this, but if
25 you look at some of the training, we know that there were

1 knees on neck being trained in Officer Thao's academy.

2 If we could put up just a couple pictures. And
3 this is from his time at the academy in 2009. If you
4 recall, he was actually given sort of as a memento a number
5 of different photographs. And so we've got some photographs
6 from 2009 that clearly show things. And these are exhibits
7 which have been admitted in evidence. You can review those.

8 This is Exhibit T-27. This is one of the
9 supervisor's desk at the police academy, Special Operations
10 Center. And you can see in the background there's a
11 bulletin board and you can see at the top there are the
12 officers that were a part of the academy.

13 And if we could show a couple videos that clearly
14 show officers using their knees on someone's neck. Do you
15 see the knee right there (indicating)?

16 Okay. We can move to the next one. And if you
17 look at the officer's knee.

18 If you could move to the next one, this is
19 actually a 2009 version of Officer Thao, along with another
20 recruit, and they are using their knees on people's necks.

21 And then we also showed you videos that were taken
22 in the 2017 police academy. This is when the officers are
23 doing drills on how to put handcuffs on somebody down. And,
24 again, Officer Black -- excuse me, Inspector Blackwell's
25 testimony was we don't train the use of knees. Do you see

1 the officer's knee on the person's neck?

2 And if you recall the testimony about the special
3 equipment they're wearing, that helmet actually has a plate
4 on the back of the neck as opposed to the front, which lends
5 credence to the idea that they might be expecting that
6 people use their knees on neck.

7 There's another one.

8 And there's another one.

9 And there's one where two officers are doing this.

10 And then if you go to that infamous slide 31,
11 which if we could take down that, it again shows an
12 instructor using their knee on someone's neck. We now know
13 that Officer Blackwell's testimony wasn't accurate.

14 Now, if you look at my client's specific excited
15 delirium training, he testified he received training on
16 excited delirium at the police academy that was a
17 PowerPoint. And then following his layoff, he came back to
18 the police academy and over the course of years in-service
19 was shown that exhibit, T-12. He testified he had seen that
20 exhibit.

21 All right. He also had had lots of exposure to
22 people in this circumstance, in excited delirium, and he
23 talked about the need, what they're trained on, to restrain
24 the people so they don't exhaust themselves to death,
25 essentially for their own safety. That's why they come in

1 and sedate them.

2 I would point out a couple things. One is the
3 government equates restraint to use of force, and that's not
4 always correct. A person can be restrained without a use of
5 force. An officer can come over and place his hand on my
6 arm. That's not really a use of force. He's just
7 restraining me. I can also be restrained when I'm put in a
8 room with special padding, like at Fairview Riverside, or I
9 can be restrained down on the ground. The idea is why is a
10 person being restrained.

11 Now, look at my client's experience. He testified
12 about two specific examples of the approximate 30 times he
13 dealt with excited delirium.

14 One was when they responded to a car in a snow
15 bank, and by the time he'd gotten there both fire and EMS
16 was there and the person was loaded into the back of the
17 paramedics thing, and they were sitting around talking when
18 all of a sudden the person woke up and started fighting.

19 The second one my client testified about getting a
20 call to "one down" on approximately 46th and Hiawatha and
21 coming there and EMS had already loaded the person up when
22 they're sitting there talking. And then the person got in
23 the van. They asked them, "Do you want somebody to go
24 with?" "No, I don't." And then a couple minutes later
25 there's a call fighting with paramedics.

1 So in my client's own experience, he's dealt with
2 people who have risen up when they're in excited delirium
3 and gotten violent again, in addition to his particular
4 training.

5 Now, with regard to the training he received, they
6 talked about the role of police in sedation in that
7 PowerPoint. Again, you'll get that to go back with you.
8 The role of the police officer is clearly to restrain a
9 person so that they can be sedated for their own safety.

10 Now, the government's talked about scene safety
11 and they made a great deal of this crowd up there, that that
12 crowd wasn't posing any danger to the officers. But when
13 you look at my client's actions or inactions, look at the
14 idea of scene safety as being much more than just simply the
15 crowd of people who were standing there doing whatever
16 they're doing.

17 And, by the way, these people don't know what's
18 going on. They don't know what's going on with Mr. Floyd
19 before, when he was in the car or brought over to the Dragon
20 Wok or brought here, the struggle. All they see is the
21 police officers on him.

22 And they're calling out and asking for certain
23 things, but when they're doing that, my client's testimony
24 is they were restraining Mr. Floyd to wait for EMS. They're
25 essentially waiting for medical services to arrive to sedate

1 him for his own well-being.

2 Additionally, you've seen from some of those
3 videos in the excited delirium training these people can be
4 violent, maybe -- it's a medical issue, I'm not saying
5 they're doing anything criminal or wrong, but you can see
6 them punching people, punching fences, breaking free,
7 attacking police officers, doing all kinds of stuff. This
8 is what they train these officers to believe is going on
9 with excited delirium.

10 So there's a component of safety of the officers
11 and then a component of protecting the person from themselves
12 or attacking bystanders. So think about that when you look
13 at my client's actions.

14 Now, if you look at this case, one of the things
15 the government has pointed out is they don't have to prove
16 that Mr. Thao intended to have Mr. Floyd die. Absolutely
17 correct. I'm not saying any of that is wrong. But you have
18 to look at my client's intentions within the context of
19 willfulness.

20 And if my client reasonably believes that
21 Mr. Floyd may be in excited delirium and reasonably believes
22 that he needs to be held until EMS arrives, his purpose is
23 not a bad purpose and it's not done with improper motive.
24 It is done to make sure that he receives the medical
25 attention he needs. This is what goes to the idea of

1 willfulness, ladies and gentlemen of the jury. This is an
2 element the government has to prove beyond all reasonable
3 doubt.

4 I would also point out one final thing is that
5 with regard to the deliberate indifference to the serious
6 medical needs and the failure to intervene, one of the
7 things that my client was trained is that if you don't have
8 a pulse, you are supposed to perform immediate CPR.

9 And so the idea is that if Mr. Thao was standing
10 there and the other three officers are monitoring or dealing
11 with Mr. Floyd and he doesn't see them rolling Mr. Floyd
12 over and doing CPR, a logical assumption from that, from his
13 training, is that Mr. Floyd still has a pulse.

14 If that is the case, he's not being deliberately
15 indifferent to the medical needs of Mr. Floyd and,
16 additionally, that force is not unreasonable because
17 Mr. Floyd still has a pulse.

18 The specific intention behind my client's actions,
19 rightly or wrongly, was to try to make sure that Mr. Floyd
20 was actually being held until he could receive medical
21 attention. And for you to find my client guilty, you have
22 to find that his actions in doing so were done with a bad
23 purpose or improper motive.

24 In this case when I spoke to you at the outset, I
25 said at the end of this case, once you've heard all the

1 evidence, there will only be one reasonable verdict and that
2 verdict is not guilty on all counts. Remember, just because
3 something has a tragic ending does not mean it's a crime.

4 Thank you very much.

5 THE COURT: Thank you, Mr. Paule.

6 Members of the jury, let's take a brief recess at
7 this time. We'll stand in recess for just about ten
8 minutes. And, again, keep an open mind and don't discuss
9 the case.

10 The jury may be excused.

11 (Recess taken at 1:37 p.m.)

12 * * * * *

13 (1:48 p.m.)

14 **IN OPEN COURT**

15 **(JURY PRESENT)**

16 THE COURT: Mr. Plunkett, I'll recognize you for
17 summation.

18 MR. PLUNKETT: May it please the court.

19 Ms. Bell, your team, Mr. Paule, Ms. Paule, Mr. Tou
20 Thao, Mr. Gray, Mr. Lane, family, supporters, friends,
21 members of the jury.

22 There are four factors that led to the
23 conclusion -- lead to the conclusion that Mr. Alex Kueng, a
24 26-year-old idealist from North Minneapolis, did not act
25 willfully as alleged in the crimes he is charged with.

1 Those factors are: One, his inadequate training; two, his
2 lack of experience; three, his perceived subordinate role to
3 Mr. Chauvin and the other officer; and his confidence in his
4 senior officers, one of which, Mr. Chauvin, was his field
5 training officer until just two and a half shifts prior to
6 this event. Those four factors, combined with a
7 confrontational crowd, created a dynamic, unusual, and,
8 frankly, foreign situation.

9 When we first met during my opening statement, I
10 told you that this case is about a tragic event in our
11 nation's history that we have all now viewed from every
12 available angle and perspective. As I said, things cannot
13 be unseen.

14 But those many videos that we have now been
15 exposed to are not what Alex Kueng saw, perceived, or
16 experienced on May 25th, 2020. In fact, his own body
17 camera, body-worn camera, does not fully explain or
18 demonstrate what he perceived and experienced as it was
19 happening.

20 There's one legal principle that I anticipate the
21 court will instruct you on, well, there's many, but one I
22 want to focus on, and that is the need to avoid relying on
23 20/20 hindsight while you apply the law to the facts in your
24 examination of Mr. Kueng's conduct.

25 Now, of course you must take the law as it comes

1 to you from the court, but what does it mean to avoid using
2 20/20 hindsight? It means, as a fact-finder, you should
3 avoid considering matters that are outside the realm of
4 Mr. Kueng on what he could see, perceive, or experience when
5 considering or determining if his actions reflect a willful
6 disregard for Mr. Floyd's constitutional rights.

7 Again, I'm Tom Plunkett and this is my closing for
8 Mr. Alex Kueng. A closing is a wrap-up. It's Mr. Kueng's
9 last opportunity to have me address you on his behalf.

10 In the next hour or so, and I will try to move
11 with a little alacrity here as we've been here a month --
12 I'm going to talk about who Alex Kueng is, why he became a
13 police officer, his training, the evidence, testimony that
14 we have heard over the last month.

15 But first I want to talk about the elements of
16 these two offenses. I put the elements first because a jury
17 must apply the law as the judge gives it to you to the
18 facts. So to simply put -- put it simply, if we don't talk
19 about the law first, you have nothing to apply the facts to.

20 Elements. I anticipate this court will instruct
21 you on the elements of the offense. Now, perfectly clear,
22 I've said it already, any time throughout my presentation
23 when I talk about law, always know now and throughout my
24 closing presentation that only the judge can give you the
25 law.

1 Alex Kueng is charged with two counts in this
2 criminal indictment. Both of the counts charge him with
3 deprivation of civil rights. Although each count is an
4 alleged violation of the same law or statute, they are, in
5 fact, different offenses with slightly different elements,
6 although there's a fair amount of overlap. Elements are
7 what the government needs to prove to you by proof beyond a
8 reasonable doubt.

9 In Count 1 it is alleged that Alex Kueng deprived
10 Mr. Floyd of his right to be free from unreasonable seizure
11 during an arrest on May 25th, 2020.

12 In Count 2 it is alleged that Alex Kueng deprived
13 Mr. Floyd of liberty without due process of law by acting
14 with deliberate indifference to George Floyd's serious
15 medical needs.

16 There are four elements, I believe, to each
17 offense. For now I'm going to focus on the second of those
18 four elements, and that's the willful element.

19 To act willfully means that it must be proven that
20 Alex Kueng acted with a bad purpose or improper motive to
21 disobey or disregard the law, specifically intending to
22 deprive Mr. Floyd of his rights.

23 The government does need to show Alex Kueng had a
24 specific intent. Specific intent must be proven.
25 Essentially, that as he knelt there that day, he intended to

1 willfully deprive Mr. Floyd of his rights. If it is not
2 shown that there's a willful act with specific intent to
3 deprive Mr. Floyd, and not just shown, but shown by proof
4 beyond a reasonable doubt, then the crime is not proven.

5 In Count 2 the government must prove that Alex
6 Kueng acted with deliberate indifference. That means the
7 government must prove that George Floyd suffered -- and this
8 is Count 3 -- from one or more objectively serious need and
9 that Mr. Alex Kueng knew of that serious medical need, but
10 deliberately disregarded George Floyd's medical needs.

11 Evidence. Most of the evidence came to us from
12 the mouths of witnesses and via videos.

13 I anticipate that the court will instruct you on
14 the credibility of witnesses. Please listen to that
15 instruction. I'm not going to read it to you. I want to
16 move -- be efficient, but not waste your time. You are
17 going to get a copy of the instructions. Please take a
18 close look at that one.

19 Now let's talk about some of the witnesses.
20 Dispatcher Jenna Scurry and Captain Norton of the
21 Minneapolis Fire Department. It wasn't entirely clear to me
22 why they talked so much about this fire truck versus
23 ambulance thing.

24 Keep in mind -- it's a small point, but the
25 government brought it up, so I thought I should cover it.

1 When Captain Norton with many, many years of experience
2 testified, Captain Norton said EMS is not solely the fire
3 department. Captain Norton testified -- please recall that
4 I confirmed. If you say I need EMS, are you asking for
5 medical services? He says, yes, sir, that's paramedics and
6 fire. I believe Mr. Thao testified to that too. When you
7 say EMS, you expect the entire calvary. That's what these
8 gentlemen did. I don't know that it's an important part of
9 the case, but the government brought it up, so I felt I
10 needed to address that.

11 Paramedic Derek Smith. A calm fellow, to be sure;
12 a highly trained and experienced paramedic and a man of few
13 words. He felt the scene was not safe to provide medical
14 care, so he moved Mr. Floyd to a different location. To
15 him, the scene was not safe for medical care. He chose to
16 go a couple of blocks away. He felt the crowd was hostile.

17 There was questions to him about his May 29th
18 interview with the FBI where he said I'm going to go home at
19 the end of the night. The way they teach it is scene safe,
20 and that scene was not safe.

21 Inspector Blackwell. Please take time to reflect
22 on and scrutinize the difference between Inspector
23 Blackwell's direct examination by the government and her
24 cross-examinations.

25 I'm going to run through just a few quick things

1 that she talked about and then I'm going to talk about some
2 other things.

3 You've already seen these, so I want to go through
4 these pretty quickly. I think this is T-20. She told you
5 straight up that this is never trained, but we know that in
6 Tou Thao's class and in 2017 that the knee on the neck was a
7 common practice. We know that because we've seen it on two
8 different occasions.

9 She also told you that at this big fight training
10 scenario -- we never saw the fight training scenario, we
11 never heard any testimony about it from anyone except her,
12 but what we did see is scenarios end when the persons are
13 handcuffed. We did see that.

14 The side recovery position was never part of the
15 scenarios. Do you remember I asked her about the lesson
16 plans? Because the government had gone through the lesson
17 plans in some detail. And she conceded that it appears
18 nowhere in the lesson plan.

19 This is the duty to intervene training. This is
20 one slide in a slide deck. What is the duty to intervene?
21 We found out now that when you come to this slide, somebody
22 reads to you, to the recruit, the policy; gives a couple of
23 rather obvious examples about situations where you should
24 intervene, kicking somebody in the head that's handcuffed;
25 and then they play this video. But this video doesn't exist

1 anymore, so we don't really know what it is.

2 We know in the training that she said, oh,
3 heavens, no, we don't train a "us" versus "them" mentality.
4 That's not what we do. But when we got to the last slide in
5 the use of force defensive tactics presentation, we saw the
6 video with very disturbing images. Even their expert,
7 Mr. -- Chief Longo, said that that video was disturbing. I
8 don't see any reason to play it for you again. We don't
9 have five minutes to sit and watch that again. I think
10 we've seen it twice.

11 We have this slide from the excited delirium
12 training. I think we heard testimony that what this slide
13 shows -- I think Mr. Paule brought up the comments -- is
14 that someone with excited delirium needs to be held down.

15 We learned that the inspector was promoted out of
16 training just two and a half months before the DOJ
17 started -- the Attorney General for the United States,
18 Department of Justice started their patterns and practices
19 investigation and we found out that that investigation is
20 going to focus, among other things, on training.

21 We know that Inspector Blackwell met several times
22 with a team of lawyers, and I think one of the agents said
23 there was 100 agents on this case. She met with them many
24 times.

25 She talked to me once on the phone. I told her I

1 can't talk to you, but I've got a private investigator named
2 Susan Johnson. When Susan Johnson called her three times
3 and left a message, she didn't talk to us. She said I
4 receive a lot of phone calls that I don't know the validity
5 of who they are. Well, the validity of who they are is I
6 said I've got an investigator named Susan Johnson and she'll
7 be in touch with you. Think about that in terms of what it
8 shows for bias.

9 She had a past relationship with Mr. Chauvin of
10 about 20 years. I think they were CSOs at the same time in
11 different precincts. She personally chose Mr. Chauvin to be
12 an FTO. She confirmed that. She said that when they choose
13 FTOs, they don't look at any psychological evaluations, they
14 don't do that, yet they have these people training young
15 officers. That only came out on cross. The government
16 didn't bring that up.

17 She said that the recruit academy had gone
18 completely away from a paramilitary structure. I'm not
19 going to run through that training manual again from the
20 recruit program. You've seen it already. Just rely on your
21 memory. But several hours of drill and ceremony, parade
22 rest, stand at ease, column left. And she testified that,
23 well, those have a lot to do with riot training. Brace the
24 wall, all these things.

25 Inspector Blackwell testified that the officer of

1 the day position is a leadership opportunity in the academy
2 to get officers, young officer -- recruit officers
3 accustomed to dealing with, you know, real-life police
4 officers. That didn't really pan out.

5 Exhibit K-F, that is the Survey Monkey from 2018.
6 It's an exhibit that you will have an opportunity to read
7 and review and think about. It chronicles the depth of the
8 chronic failures of the FTO program, that nobody knows what
9 the recruits are being taught. One of the FTOs doesn't even
10 want more training because he characterized Minneapolis
11 Police training as going into a room and zoning out and
12 drinking too much coffee until you need to relieve yourself.
13 That chronicles -- that's what chronicles the problems.

14 And in response to that, she created a 40-hour
15 class, a 40-hour class with no metric of learning, no test.
16 Well, there's one test. They got a lawyer that teaches
17 about some constitutional principles. Of course, the lawyer
18 shows up at the test. That class is some sort of magic
19 inoculation against all the problems in that program?

20 It's her program. She was the training -- head of
21 training. Now there's an investigation from the DOJ. She
22 has some bias. She's close friends with -- or was a close
23 associate of Mr. Chauvin.

24 The point is this. I've asked you, the jury, to
25 consider four factors. I'm sure you remember what they are.

1 And we're going to talk about some more of those things.

2 Officer Mackenzie. Good officer, shows
3 initiative, dedicated. She endeavored to help the
4 department save money, yet still provide good training. She
5 created the EMR program for the City of Minneapolis. That's
6 her baby. That's her contribution. That's her mark on the
7 world.

8 Let's talk about some of the things that the
9 government never seems to mention to you from the EMR
10 training.

11 Here we have page 80. Your first consideration at
12 any emergency scene is safety. Your safety is paramount, as
13 is the safety of others on the scene. Some scene safety
14 hazards include violent or hostile situations.

15 Page 82, scene safety. If the scene -- if the
16 incident is hostile, fight or flee, use cover or
17 concealment.

18 Page 83. This is talking about triage of medical
19 patients. To implement START, first ensure that you are
20 safe and that you have communicated that type of incident
21 with which you are involved to your communications center.

22 Page 214. Assessment of cardiac arrest. Ensure
23 the scene is safe.

24 They were tested on this. Exhibit 85, page 2,
25 make sure the scene is safe. As a critical criteria -- you

1 lose points. Critical grading criteria. Failure to
2 determine the scene is safe. The same in this patient
3 assessment section.

4 Page 9 of that exhibit. Check the scene is safe,
5 then approach the patient. You approach the scene and
6 ensure that it is safe. Demonstrate what you do next.

7 Same thing on -- similar on page 10. It talks
8 about check the carotid pulse.

9 Page 11. Ensure the scene is safe.

10 Here's the test. This is Mr. Kueng's test. The
11 best method for checking circulation in a triage situation
12 is to check the carotid pulse.

13 Page 17. If you are unable to feel a carotid
14 pulse in an unconscious person within five to ten seconds,
15 you should begin cardiopulmonary resuscitation at once, CPR.

16 18. Determine that the scene is safe and assess
17 the patient.

18 Check the carotid pulse, we heard that repeatedly.
19 On cross-examination Officer Mackenzie talked about --
20 talked about this. She agreed that checking the carotid
21 pulse was the gold standard. And where an EMR should go
22 during the ABCs, airways, breathing, and circulation, the
23 "C" is the carotid pulse.

24 Officer Mackenzie agreed in her testimony that
25 Officer Chauvin was in the best position to assess Mr. Floyd

1 due to his proximity to Floyd's head and his carotid artery.
2 She agreed that when Mr. Kueng did not get a radial pulse or
3 a wrist pulse, that he reported that to Officer Chauvin, who
4 was in control of the head.

5 She also confirmed that if a person cannot find a
6 radial pulse, they should actually check a carotid pulse.
7 In fact, if you don't find a carotid pulse, she said you
8 should have another person check before beginning CPR if it
9 can be done quickly.

10 Officer Mackenzie confirmed or testified that the
11 radial pulse is not reliable when a person is in handcuffs.

12 She also testified that there isn't a discernible
13 difference between EMS and fire and rescue.

14 Lieutenant Zimmerman. You can't help but like the
15 lieutenant. He's a venerable grandfather figure, but we did
16 peel back that onion just a little bit. Let's talk about
17 that.

18 He's not a bad man, he's a good person, but he,
19 like most, viewed the video, the Frazier video. That's the
20 viral video. It's powerful. The video shows Mr. Chauvin.
21 But his testimony was not consistent with what a good
22 homicide investigator does, because after viewing that video
23 he began confabulating the facts, changing them to fit a
24 narrative that he wanted.

25 He testified that the boys lied to me. They told

1 the FBI -- yeah, the first thing they said was, you know,
2 can we turn off our body-worn cameras? That imputes a
3 suggestion that the officers wanted to hide something. I
4 played the video for you. They never said it. They told
5 him that they suspected an overdose. That's a very
6 significant change from what was actually said, because if
7 you honestly suspect an overdose, then you've got actual
8 knowledge of a serious medical need. Never said, it was
9 never said to him, but he told that to the FBI. There's a
10 third thing that escapes me right now, so I apologize.

11 Keep in mind the context of that statement.
12 They're calling it a statement, but there was not a question
13 and answer. It's nothing like that.

14 Ah, the third thing. It came back to me like a
15 flash. He told the FBI that they lied because they never
16 told him 330 was involved. 330 is the squad car for Mr. Thao
17 and Mr. Chauvin. They actually did say that. Granted, he
18 was looking at his phone. When you look at the video, he
19 looks up, though, while they're talking about that. I don't
20 know why he'd tell that to the FBI except he saw this
21 powerful video and it changed how he saw it and perceived
22 the events that night.

23 The context of that interview too, if you
24 remember, was a critical incident interview. They thought
25 that this was the safety statement, where you're just

1 supposed to give a little bit of information to the --
2 actually it's supposed to be the scene commander, but the
3 guys were young, they were inexperienced. They just knew it
4 was a lieutenant, so they cooperated. I think Mr. Lane was
5 trying to clarify this. What do you want? Front to back?
6 He says yeah.

7 Sergeant Pleoger, this is a use of force review
8 that I think Mr. Kueng said he'd never actually experienced
9 before. But to come up here and look at you people in the
10 eye and say that those two interviews show that -- I'm more
11 worried about Mr. Kueng, but that these two officers were
12 lying, that doesn't pan out. That doesn't make sense. That
13 doesn't -- it conflicts with common sense. This wasn't a
14 question and answer interview. This wasn't a planned thing.
15 This was tell me what happened. The same with Sergeant
16 Pleoger.

17 Experts. We heard from two use of force experts,
18 Mr. Longo, Chief Longo, very good witness. But one can't
19 miss the fact that Mr. Longo said he was contacted by
20 Ms. Trepel, who is seated right over here from the DOJ.

21 It didn't come out in his report, it didn't come
22 out when the government was questioning him, but on
23 cross-examination we found out that he had volitionally
24 involved himself in the investigation from very near the
25 beginning. On cross-examination we found out that he called

1 up the county attorney's office because he wanted to be
2 involved in this case. We found out that he gave -- because
3 there was going to be an interview of at least one officer,
4 he fed questions to the investigators through the county
5 attorney's office and to the BCA.

6 I don't know that you can say that you are
7 objectively evaluating a case if you are involved in the
8 actual investigation from day one and you seek it out. It
9 certainly is much different than Ms. Trepel calling him up
10 and saying to you are you interested.

11 Cozy relationship with the DOJ through his
12 monitoring programs. The materials that he read were
13 cherry-picked. He only got what the government wanted him
14 to have. Think of bias. Think of things that would have to
15 make you question the veracity of his testimony.

16 He testified that he'd been through the training
17 scenarios and everything and that he thought the duty of --
18 the intervention training was really quite good here in
19 Minneapolis. I confronted him on that. You mean reading a
20 slide and reading a policy and giving a couple of examples
21 is good training? Well, no. He's crawl-dadding at that
22 point. He said, well, I looked at the -- you know, all the
23 training. Well, we found out before he even testified from
24 Inspector Blackwell that the word "intervention" doesn't
25 even appear in the lesson plans.

1 Mr. Ijames, Steve Ijames. Forty years as a law
2 man; done use of force training all over America, all over
3 the world; doesn't have a dog in this fight. He's not paid
4 for his time. He testified and he explained that when you
5 look at this situation, that -- well, first, the training
6 was lousy, inadequate. And he was given full access to the
7 entire file. He could look at anything he wanted. He
8 didn't look at the Super Bowl Taser plans, things like that,
9 but he wasn't restricted. Think about his testimony. I'm
10 not going to review this stuff in all that great of detail
11 because you sat here and you heard it too.

12 Special Agent Vogel. The judge is going to tell
13 you about not using 20/20 hindsight. Well, I think the
14 special agent spent over 100 hours looking at these videos
15 and trying to piece together his rather attractive
16 three-colored timeline. The timeline, however, is just data
17 marks in time. It's not accurate because it doesn't show
18 what happened, it didn't show what people saw, perceived, or
19 knew.

20 Doctors. We heard from doctors from all over the
21 country, truly outstanding doctors that had many hours to
22 review all the video, look at this from many different
23 angles. I think I reviewed all of the different things two
24 of those doctors reviewed and it was a rather lengthy list.

25 And they came up with conclusions about very

1 intricate medical things. One of the doctors even testified
2 that he used the expression on Mr. Floyd's face to determine
3 when he had passed out. Again, these are things that they
4 were able to see, perceive, and know that were not available
5 to the officers.

6 Actually, we had two doctors from right here in
7 Minnesota, Dr. Baker and Dr. Langenfeld. I don't know that
8 we needed any more information, but we had to have two
9 more -- at least two more physicians come in and talk about
10 it. They spent a lot of time and they were paid a handsome
11 fee.

12 There was many bystanders, Genevieve Hansen,
13 Darnella Frazier, Alyssa Funari, several bystanders. What
14 they have in common is that they saw things from a
15 perspective that was unavailable to Officer Kueng.

16 Alex Kueng, that's really the only thing I should
17 have to talk about. Alex Kueng took the stand behind me.
18 He testified. He listened to every question that the
19 government wanted to put to him and answered it. You decide
20 if he was truthful. He reflected on his answers, listened
21 to the questions, and answered them.

22 He explained what he was able to perceive and
23 understand. He talked about not knowing if the scene was
24 safe. Why not? Because Mr. Chauvin unsnapped his Mace and
25 shook it at the crowd. That was a moment of significance to

1 him. He could hear bits and pieces. He could hear some
2 things. I don't know what all he heard. He talked about
3 how this was the biggest struggle he'd ever been in. He
4 talked about how his focus shifted, had some tunnel vision,
5 some auditory exclusions because of the intensity of the
6 situation. That's what he could see. That's what he could
7 perceive. That's what he could experience.

8 And who is Alex Kueng? He's a young man. He was
9 only 26 at the time, 28 now, certainly the youngest person
10 involved here. North Minneapolis kid. Comes from a blended
11 family. Had reasons not to like the police because they --
12 I don't think he used the word "harassed," but they were
13 impolite to his sisters or his family members when they came
14 to the home.

15 But he comes from a family of missionaries that go
16 abroad and help people, his grandfather, his mother, and
17 himself. And he wants to make this world a better place, a
18 better place not for him, but for everybody. That's why he
19 decided that he was going to become a police officer.

20 Got a job doing security I think at Macy's. No
21 training there. Got into the program, was a CSO and worked
22 very hard. Yeah, he had training, no question about it.
23 I'm not trying to say he wasn't trained. I'm trying to say
24 that the training was inadequate to help him see, perceive,
25 and understand what was happening here.

1 He was in the FTO program. He was under the
2 influence of an FTO that he'd had for two more sessions than
3 policy wants, than policy says you should do. He respected
4 this person. He looked up to this person. He relied on
5 this person's experience.

6 This is something that I really want to talk
7 about, because the government talked about this in their
8 closing. It was objected to, the way they presented it in
9 their testimony. And I don't say this lightly, but this is
10 just plain sneaky.

11 They took this body-worn camera, Ms. Sertich right
12 from her mouth said that this is how things happened during
13 the examination. Tom Lane, TL: "Roll him on his side?"
14 George Floyd: "Ah." JK, that's Alex Kueng, J. Alexander
15 Kueng JK: "No." Derek Chauvin: "No." JK, Alex Kueng:
16 "Just leave him." Derek Chauvin: "Staying put the way you
17 got him." George Floyd: "Ah!" They actually presented
18 that to you as evidence in a serious case.

19 Let's take a look at that video.

20 (Video recording played)

21 This case is not just data marks in time. This is
22 a flowing event, and it didn't flow the way that transcript
23 tries to make you believe or that the government tries to
24 make you believe. It flows the way it happened on this
25 tape. That's what you have to rely on. That's the real

1 evidence.

2 I'll show the other video that they talked about
3 of Mr. Kueng, Alex Kueng right here. This is the one where
4 we cross-examined and he said, well, I was just passing
5 information down the line. But in the interest of
6 completeness, they tried to portray this one to you
7 differently than it really is. We'll take a quick look at
8 it

9 (Video recording played)

10 What happened at this scene, Alex Kueng was
11 confronted with something that was probably beyond his depth
12 at that point. This guy -- you know, Alex Kueng, he only
13 looks small when he stands next to Tom Lane. He's a
14 broad-shouldered fellow. He's a high-level competitive
15 soccer player. He and Mr. Lane couldn't get Mr. Floyd in
16 the car, try as they did with their training. They were
17 working on it.

18 Mr. Chauvin shows up with Mr. Tou Thao. And just
19 like in FTO, they took over, indicating that you're not
20 doing it right. The question is what did he see, perceive,
21 and experience.

22 I'm going to talk about the JIGS a little bit.
23 JIGS means jury instruction guide. Some people put these up
24 on the big screen. I don't think that's necessary. Let's
25 just kind of move through these. It's my understanding the

1 court will give you your own copy to look at, but this is
2 the law.

3 You will be instructed on the presumption of
4 innocence, page 13. "The presumption of innocence alone is
5 sufficient to find each defendant not guilty of each count."

6 Willful, it's an element. The defendants acted
7 willfully, that is, with a bad purpose or improper motive to
8 disobey or disregard the law, specifically intending to
9 deprive the person of their rights.

10 Page 19, it talks about objectively unreasonable
11 in light of the facts and circumstances as judged from the
12 perspective of a reasonable officer on the scene without the
13 benefit of 20/20 hindsight, without the benefit of looking
14 at the Frazier video, without the benefit of having doctors
15 that are -- have years of education and decades of
16 experience.

17 Unreasonable use of force to occur in their
18 presence if that officer has the opportunity to stop the
19 force. Read on from there. This means that if an officer
20 knows that the fellow officer is using unreasonable force,
21 they have to realize it.

22 That the defendant actually knew Mr. Floyd had a
23 serious medical need. However, you must find that the
24 defendant had specific intent to deprive the person of a
25 protected constitutional right by federal law.

1 Specific intent instruction. To establish
2 specific intent, the government must prove that the
3 defendant knowingly did an act which the law forbids
4 purposely, purposely intending to violate the law.

5 You're going to have the JIGs. You don't need me
6 to read you the JIGs. I've been watching you. You are
7 hardworking. I've seen note-taking, watching, listening.
8 Apply the law, the law to the facts and think about it.

9 You are a jury. We often hear about the mob
10 mentality. Courts are this country's protection against the
11 mob, and courts depend vitally on you, as jurors, to examine
12 the facts and discharge your duty to be fair and impartial.
13 The exact opposite of a mob.

14 There is a quote from a book about a case that
15 captures this and the quote is this: When a man is thrown
16 to the mob, is that justice? Let me tell you what justice
17 is. Justice is the law. And the law is a man's feeble
18 attempt to lay down the principles of fairness for all,
19 fairness for all. And fairness isn't a deal. It's not a
20 contract or a hustle or an angle. Fairness. Fairness is
21 what your grandmother taught you. Fairness is about being
22 honest. That is what this case is about, that is what the
23 law is about, fair to all.

24 Judge Magnuson will instruct you about the law.
25 For you, as jurors, fairness is to follow the law and apply

1 it to these facts and have the bravery to do just that.
2 That's the only way we don't descend into the mob. This is
3 the only way we carry out the important business that bring
4 us all together to serve our constitutional principles that
5 so many gave so much to preserve.

6 Thank you.

7 THE COURT: Thank you, Mr. Plunkett.

8 Members of the jury, let's take another ten-minute
9 recess at this time. We will stand in recess for another
10 break. And please don't discuss the case during the recess
11 and continue to keep an open mind.

12 The jury may be excused.

13 (Recess taken at 2:31 p.m.)

14 * * * * *

15 (2:45 p.m.)

16 **IN OPEN COURT**

17 **(JURY PRESENT)**

18 THE COURT: Mr. Gray, I'll recognize you for
19 summation.

20 MR. GRAY: Thank you, Your Honor.

21 Your Honor, counsel, counsel, ladies and gentlemen
22 of the jury.

23 I sat through the same arguments you sat through,
24 and I've readjusted my arguments because of their arguments.
25 Some people call it summation, but it's more of an argument.

1 And, as you know, my client is only charged with
2 one count -- you've heard that for the last three,
3 four weeks -- and that's being deliberately indifferent to
4 George Floyd's medical needs.

5 And you've heard the other attorneys talk about
6 specific intent, willfulness, actual knowledge that the
7 person, Mr. Floyd, has a medical need, a serious medical
8 need.

9 Before I get in there, though, and start talking
10 about that, I'd like to talk about the federal government's
11 final argument that they presented to you, and there are
12 some things in that argument that just don't sit well.

13 First of all, they talk about this crowd that
14 egged on the -- check Floyd's pulse, do this, do that. You
15 will hear that crowd when you watch the videos. I'm not
16 going to play them for you, but you will see it's not the
17 friendliest crowd.

18 Maybe not at first when the older gentleman was
19 talking to them, but when the older gentleman was talking to
20 them, he told George Floyd to cooperate and get in the
21 vehicle. We didn't hear that.

22 And the crowd, the crowd -- of Floyd resisting,
23 that crowd didn't see that, most of those people. They
24 didn't see the three and a half minutes of a 6'2", 6'4",
25 225-pound man of muscle fighting with two police officers.

1 They're not using clubs. They're not Macing him or
2 anything. They're just trying, trying to put him in the
3 backseat of a squad. And these bystanders, they didn't see
4 that part of it.

5 But the government -- you rely on those
6 bystanders. If they tell you to check the pulse, you check
7 the pulse. They didn't get all the information as the
8 police officers did, Lane and Kueng.

9 They didn't see the original arrest when George
10 Floyd fell down, struggled with the officers to get
11 handcuffed. They didn't see that. They didn't see George
12 Floyd in the car.

13 And I'm not bad-mouthing George Floyd, but let's
14 face it, let's face the facts and the evidence. And the
15 evidence is that when my client walked up to that Mercedes,
16 this -- George Floyd was not cooperative at all at first.

17 My client had to take his gun out and yell at him,
18 "Just let me see your hands," before he did it. And think
19 about that. And that's policy. You heard that from the
20 lady, Blackwell. She said that's what you are supposed to
21 do when somebody doesn't cooperate.

22 And as soon as George Floyd started cooperating,
23 put his hands on the wheel, my client, Thomas Lane, did what
24 he was trained to do; he put the gun in his holster. And
25 you may have heard somewhere in this trial that that's

1 difficult to do once the officer draws it out. But he put
2 it back and he talked softer to George Floyd.

3 They got him out of the vehicle. Finally, he had
4 to pull him out. And they struggled with him to handcuff
5 him, two young men struggling with George Floyd. And why?
6 Because they were trying to wrestle him. They weren't
7 bashing him over the head with anything. They're trying to
8 be cooperative police officers, to cooperate with the
9 people, the arrestee. They're trying to de-escalate the
10 situation.

11 They finally got him handcuffed. Then my client
12 goes over and asks the two passengers: "What's with
13 Mr. Lane [sic]?" And they say, "Oh, no, he's not on drugs.
14 He just doesn't like the police." And that's paraphrasing.
15 You may have in your notes -- but that's basically what they
16 said.

17 And what do the experts say from the Minneapolis
18 Police Department, Blackwell and Mackenzie? That's what
19 you're supposed to do. Mackenzie says by doing that you're
20 trying to find out if the noncompliance is a result of an
21 intent, that the man intended to do it, or is he an
22 alcoholic, is it drugs, what's with the guy, or is he
23 mentally ill, actually. And that's what Mr. Lane did
24 pursuant to policy, right in the book. We went through it
25 two or three weeks ago.

1 Then he comes over and they handcuff -- no, they
2 already had Mr. Lane [sic] handcuffed, but he was sitting on
3 the ground. They got him up and they were going to put him
4 in the squad car, pursuant to policy. You take the man and
5 you put him in an enclosed situation where you can do your
6 investigation, and they did that. Mackenzie said that,
7 Blackwell said that, yeah, that's policy. Do that and then
8 do your investigation.

9 But that didn't work that way, did it? On the way
10 over my client said, "Well, are you on anything?" Does
11 George Floyd say, "Yes, I've taken fentanyl and
12 methamphetamine and, by the way, I have a couple pills in my
13 car and, oh, also there's some counterfeit bills in the
14 seat?" He didn't say that. He said, "No. Just hoopin'" or
15 something with white stuff coming out of his mouth.

16 And these are two young police officers in an area
17 that was described to you without any contravention that
18 this is a Blood area, a high crime area. And I would assume
19 at 8 o'clock at night it's getting dark out and that's when
20 the other people, rather than the young people, come out on
21 the street in that area. My goodness, the clerk you see --
22 you seen the clerk had a Glock pistol in his back. Most
23 stores do not have their clerks with guns in their back.

24 So what do we have? We have George Floyd getting
25 to the car and all of a sudden, all of a sudden he's

1 claustrophobic for the first time. We haven't heard any
2 evidence that he'd been claustrophobic before that. We saw
3 him with his windows up in his Mercedes, because my client
4 had to pound on the window to get it down. But he's
5 claustrophobic.

6 And what does my client say? He says, "I'll roll
7 the windows down." He says, "I'll stay with you." All the
8 de-escalation taught at the school, the academy, that's what
9 he was doing. He was trying to de-escalate Mr. Floyd,
10 talking to a man who was obviously not having all his
11 faculties. He obviously was either drunk or drugged up. He
12 wasn't drunk, there was no alcohol in his autopsy, so it was
13 drugs, methamphetamine and fentanyl.

14 And they can't put him in the squad, but my client
15 trying to talk him in there, as he's taught, "I'll roll the
16 windows down." And you look at it, you check it five times.
17 He said that.

18 And during this time who arrives on the scene?
19 Derek Chauvin with his younger partner. Chauvin's got
20 19 years. His partner has, what, eight years? I don't
21 recall. That's 26 years of police experience. Most of the
22 police officers retire before 26 years.

23 But think about it. We have these officers on the
24 scene and my client and Mr. Kueng, because they don't want
25 to pound on the guy or beat him or zap him or Mace him,

1 they're still trying to wrestle with him. And my client
2 is -- they're tugging on him on the passenger side of the
3 door.

4 Chauvin comes over -- and you saw in the video and
5 you saw in the photos -- got in front of my client, who is a
6 large man, but he sees who it is and he backs off. And then
7 Mr. Chauvin takes charge. It's clear after he grabbed
8 him -- and you saw the picture -- put him on the ground,
9 Mr. Chauvin was now the boss.

10 So he's now on the ground. And my client, Thomas
11 Lane, what does he do? Pursuant to training, pursuant to
12 what he was taught, he called the ambulance, like he was
13 supposed to. Code 2. He's got a cut lip. He's now on the
14 ground.

15 And my client, as Dr. Baker said, had nothing to
16 do with the death of George Floyd, with the asphyxia. My
17 client never was on him where he would have caused any of
18 the so-called positional asphyxia. And that was Baker.
19 That's evidence of innocence.

20 And, by the way, I told you in my opening
21 statement that you would hear from the government. Their
22 evidence will be evidence of innocence, not any guilt. And
23 right up to now you've heard nothing but innocent conduct by
24 a rookie police officer. That's all you've heard.

25 And what does he do? He calls an ambulance. He

1 says to -- should we put his legs up, which would cause him
2 not to be in a prone position. Deliberate indifference of a
3 medical service? No. He was concerned. He saw him in the
4 prone position. So should we put his legs up? No. Should
5 we hobble him? No. Those were the bosses that were
6 talking. Tom Lane can't argue with them.

7 You know that. We don't need commanders, we don't
8 need the police officers in here to say, well, if somebody
9 has seniority, you look to them. That's common sense.
10 That's common sense.

11 If you go on a job for four days and you have a
12 veteran there next door to you and you -- and something
13 happens of a crisis, you look to him for help, if it's in
14 that business. That's common sense.

15 And we sure know that Chauvin, based just on his
16 conduct here and being a field training officer, was going
17 to be the leader of the pack with these two kids, with these
18 two guys. He knew that. He was going to take charge.

19 And when he saw Mr. Floyd thrashing in the car, he
20 put him down. He was going to get him. He was going to
21 show these guys. So he put him down and put his knee on his
22 neck. These guys didn't know that. My client, he's down at
23 his feet.

24 And after -- and you will see there's three and a
25 half -- if you want to measure it, over three and a half

1 minutes where George Floyd was in the vehicle trying to
2 fight out, hit his head against the wall or the glass or
3 something, was thrashing and kicking.

4 Two strong officers, I'm assuming, could not
5 control him in a way that wouldn't be pounding him on the
6 head with a club or something of that nature. They were
7 using what they were taught. My client was -- that you
8 wrestle with them, you try to get him in there. They didn't
9 do that.

10 So down on the ground George Floyd is resisting.
11 He's resisting. He's kicking his legs, you will see it in
12 the video, and he's resisting. And he resists for I think
13 it's about four and a half minutes. I have my notes. They
14 like to say that he laid without resisting for six minutes,
15 but he was resisting. And if you look at the video -- here
16 we go. If you look at the video, you will see that.

17 And as soon as he slowed down, Thomas Lane said to
18 Chauvin, "Shall we roll him on his side?" What he was
19 taught at the academy, the training. "Shall we roll him on
20 his side?" And what does Chauvin say? "No." It wasn't
21 maybe. It was a no and don't talk to me anymore sort of --
22 he didn't say that, but you've been talked to by people like
23 this. You've all experienced that in your life. It was a
24 no.

25 And then he says, "Well, I'm thinking about

1 excited delirium." Where did he -- he didn't make that up.
2 He must have learned that somewhere. "I'm thinking about
3 excited delirium." And what does Chauvin say? "Well,
4 that's why we have the ambulance coming."

5 Around that time Thao asked -- and let's just back
6 up one second. Concerned about Floyd's serious medical
7 needs? When my client asked that, is that deliberate
8 indifference? Is he deliberately indifferent? Does he know
9 something and is working against taking care of the man?
10 No. He's not deliberately indifferent. If anything, he's
11 very concerned about the arrestee.

12 He spoke up to a man with 19 years, a man who is a
13 TFO, training field officer. And the man said, "No." So he
14 backs off. He does say, "I'm thinking about excited
15 delirium." And he says, "That's why we have the ambulance."

16 Around that time -- I'm not going to get exact
17 times here -- again my client suggested to Thao -- Thao
18 asked what the ambulance was coming at, and he said a 2.
19 And my client said, "Better step it up to a 3." Deliberate
20 indifference? No. The experts, Mackenzie Blackwell, agreed
21 when he did that, he was showing concern for the arrestee,
22 to step it up to a 3.

23 And they're waiting for the ambulance to come.
24 Two minutes after the first request where my client -- to
25 have George Floyd rolled on his side, he said it again.

1 "Shall we roll him on his side?" And what does Chauvin say?
2 He doesn't. He doesn't say anything. He ignores this
3 person over here. He's just a rookie. He doesn't know what
4 he's doing.

5 You know what's going through Mr. Chauvin's mind?
6 He's got his knee on him. He's got this Donald Williams
7 yelling at him, telling him he's a bro. He's -- all kinds
8 of stuff he was calling him. And he was paying attention to
9 him.

10 My client, down by his legs at this time --
11 there's no more resistance -- never got a chance to see,
12 actually see George Floyd's face. He told you and he told
13 in the statement he gave that he thought Mr. Chauvin had his
14 knee on his back of his neck or the top of his shoulder.

15 In any event, after the second roll over and it
16 was ignored, we then get to the crisis time because he isn't
17 moving. And Lane is looking up -- and you heard his
18 testimony on this. He's looking up, and it's not disputed,
19 and he sees the back muscles going up, reassuring him that
20 Mr. Floyd is still breathing. In fact, he says -- at
21 8:25:13 he says -- Lane says, "He is breathing." Lane said,
22 "He is breathing." 26 seconds after that was when Lane said
23 roll him on his side the second time, with no answer.

24 After that, 29 seconds later, Lane asked Kueng to
25 check his pulse, and he saw Kueng checking his pulse up on

1 his wrist with handcuffs on. And he checked it twice trying
2 to find one, and he finally said he couldn't find one.

3 So all of that is being concerned about George
4 Floyd's medical needs. Not deliberately indifferent. Lane
5 was concerned. He showed it. He proved it to everybody.

6 And that's when I said in my opening statement all
7 of this government evidence that we're seeing, it's all
8 going to establish my client's innocence. And so far we
9 have nothing to show that he's deliberately indifferent,
10 that he doesn't -- that he has a bad purpose. And that's
11 what they have to show.

12 So after the -- Kueng checks 46 seconds later. He
13 doesn't -- my client sees that it's up by the handcuffs on
14 the wrist. He saw where it was. So he checked the pulse.
15 He went down to the ankle. He didn't go up to George
16 Floyd's head and neck, no, because he's down by the ankle
17 and he figured he'd check that. He knows Derek Chauvin's up
18 there and he wouldn't be able to check the carotid pulse.

19 So at 8:26:54, and you've got an exhibit -- one of
20 Tom Lane's exhibits is this time sheet, so you can go over
21 these. At 8:26:54 he checks his ankle pulse. Doesn't find
22 one.

23 Seven seconds later, seven seconds, Lane says,
24 "Here we go." And the lights and siren, he sees them.
25 25 seconds later, at 8:27, the EMT arrived. So what do we

1 have? We've got 32 seconds, 32 seconds between the time
2 when the check -- the pulse was checked and the EMT arrived.

3 And as Lieutenant Zimmerman said, when the EMRs
4 hit the ground with their feet, they take over. No
5 uncertain words about that. The police officers, the MPD,
6 Minneapolis police officers, if requested -- or if they
7 offer it can assist, but the EMRs or Ts, they're now in
8 charge.

9 So when they were in charge, it was seven seconds
10 after Lane checked the pulse. That was after he saw the
11 lights. 25 seconds later. I apologize. 8:27. 25 seconds.
12 So it would be 32 seconds the EMT arrived.

13 Ten seconds after they arrive, ten seconds, Lane
14 tells the paramedics he's not responsive. Exactly, exactly
15 what he was trained to do, tell the paramedics what's wrong,
16 he's not responsive. And the paramedic was walking towards
17 the fellow, Derek Smith.

18 Derek Smith, when I asked him was Mr. Lane helpful
19 when he went in the ambulance, he said, "Yes." And he
20 turned to Tom and he said, "Thank you, Mr. Lane." Remember
21 that? He was that sincere about getting the help. Doesn't
22 that show that he was not deliberately indifferent? Isn't
23 that substantial evidence that my client was not
24 deliberately indifferent about any of George Floyd's medical
25 needs? Of course it does.

1 Why did the government indict him? We know why.
2 Politics, ladies and gentlemen. As Mr. Plunkett said, mob
3 rule and politics.

4 MS. BELL: Objection, Your Honor. Move to strike.

5 THE COURT: It's overruled. It's final argument.

6 MR. GRAY: Yeah, he was indicted, an innocent man.
7 So far we haven't seen anything. Well, let's go on.

8 Lane stands over Floyd in five seconds getting
9 ready to put him on the stretcher. Four seconds after that
10 Smith takes the carotid pulse. And this is key. Because
11 after Smith took the carotid pulse, he didn't do anything
12 but get up. Didn't make a face, nothing. Walked slowly --
13 or walked into his ambulance, got the stretcher, and walked
14 back.

15 And as my client testified, when he saw that, he
16 was relieved because he thought, well, he must be all right
17 because the paramedic, he didn't look in a rush. He didn't
18 take George Floyd right there, as apparently the government
19 thinks my client should have. He didn't pick George Floyd
20 up, put him over on his back, and try to do chest
21 compressions. No. Why didn't he? He told you. Because of
22 the unruly crowd. Remember that? The crowd was unruly and
23 I didn't want to be interrupted, so I didn't do it that way.

24 He went in -- he walked in the ambulance, no
25 running at all, walks out with the stretcher and he tells

1 him to get out of the way, but it's on the second page here.
2 He says, "Get out of the way," which -- you know, get out of
3 the way, I'm the man.

4 And Lane helps with the stretcher and 34 seconds
5 go by before they load him into the ambulance without -- you
6 have a heavy man. You get him on the stretcher. You are
7 not rushing. Paramedic is ahead of this. They put him in
8 the ambulance.

9 You know what? And this is the part that any
10 reasonable person should just be disgusted, should be
11 infuriated to see one of your citizens -- the United States
12 of America charges one of your citizens when he offered to
13 go in the ambulance, after he saw his face, to go in the
14 ambulance and help out. How in the world could our
15 government, the wonderful United States of America, freedom
16 and all that, charge somebody that does that? Think about
17 it. Sort of scary. In other words, you can do an innocent
18 act and you can end up in a courtroom like this, because
19 that's what happened to Thomas Lane.

20 He went in the ambulance, as he was supposed to
21 do. He told them what happened, told them about the
22 resistance when they were waiting for the ambulance. He
23 didn't know at that time that the reason George Floyd died
24 was positional asphyxia. He had no idea of that. He just
25 said, "We held him waiting for the ambulance. I was down by

1 his feet."

2 So he does chest pumps. He's the first one to do
3 CPR, and that was 78 seconds. Now we got the paramedic
4 involved in this, so it's not my client's fault. And you
5 saw, you've seen the video. 78 seconds and that's when
6 Lane -- the paramedic tells Lane to start the CPR.

7 And watch it if you haven't -- if you want, watch
8 this man get on his chest after Smith takes his clothes off
9 and is pressing down, and you will see that he's really
10 trying to revive the guy. He's taking his airway. He's not
11 deliberately indifferent about anything. He wants to revive
12 the man.

13 This man was at one time in his custody. After
14 Chauvin took over, no longer, but at one time he was in his
15 custody. And he knew about custody and he knew about care,
16 and that's what he was doing. Did he do anything up to now
17 that would show any disrespect for George Floyd? No, not at
18 all.

19 That was Lane that started the CPR. He does the
20 CPR, checks his airway. You saw it on the video. The LUCAS
21 comes out. My client helps out with that.

22 And one more important thing is this. There were
23 only two paramedics, so one paramedic had to drive that
24 ambulance because it was a load and go, I guess, because of
25 the unruly crowd. You can't get around that, government.

1 That's what Smith said, that's why I left. So it must not
2 have been as peaceful as the government would like you to
3 believe.

4 Anyway he left, drove down a couple blocks. And
5 during those two blocks was when my client was assisting, or
6 three blocks, whatever. And he was needed. Besides
7 everything else, he was needed to start the CPR, because
8 Derek Smith couldn't get the LUCAS out, do the CPR, and take
9 the man's clothes off. He couldn't do all that without
10 assistance. They had two because they weren't planning on
11 loading and go. But they did, and that's when my client
12 helped out.

13 He gets out of that ambulance, gets in a fire
14 truck and rides back. What happens? At some point in time
15 he talks to Pleoger or somebody and Zimmerman, and he's
16 accused of lying, lying, he lied to them. What's really
17 strange is that Zimmerman walked away before they finished
18 the story.

19 But what's really the truth here is they didn't
20 lie. They didn't know at that time that the reason George
21 Floyd died was because he was on the ground in a prone
22 restraint with Derek Chauvin on his neck. They didn't know
23 that. They assumed he was on drugs. And you know what? He
24 was. He was eating them in the backseat of the squad car.

25 His saliva was on that partial pill, and that

1 wasn't found until the defense wanted another search of the
2 squad. You heard that. Interesting, huh? Well, as soon as
3 we charge him, let's drop it, let's not investigate. Well,
4 it was investigated and he was eating -- he was eating
5 methamphetamine and fentanyl in the backseat of that squad.
6 He had two more pills in his car.

7 In any event, these two officers accused of lying
8 and they just didn't know what happened to George Floyd.
9 They didn't know yet.

10 What's really another ridiculous thing, this
11 prosecutor stood up here and told you that my client lied.
12 And I'm looking -- I'm thinking: What? I looked back. She
13 never, ever, ever accused him of that, never cross-examined
14 him on what he told Zimmerman or what he told Pleoger. She
15 just stood up in front of you without challenging my client
16 with cross-examination, which is a truth teller. That's
17 what you use cross-examination for, is to find the truth.
18 She never once asked him why he said that. No. So I didn't
19 say anything. But then in her final argument he lied. He
20 didn't lie. Lane didn't lie. Totally unfair conduct.
21 Unfair. It's as unfair as it could get.

22 And the character of Tom, that's what they're
23 trying to do. Well, he lied. He doesn't have a good
24 character. Oh, doesn't he? The judge will tell you
25 character evidence you can consider in deciding the guilt or

1 innocence of somebody. It's very important.

2 That's why we live a good life, ladies and
3 gentlemen. That's why if we get accused of something and
4 we're innocent, we can go back to our relatives or friends,
5 the people we work with, and we can rely on them to stand in
6 court under oath and say that man is a good person, that man
7 is peaceful. And that's what we did.

8 And you take that into consideration with all of
9 his other conduct of innocence, and there could only be one
10 verdict in this case.

11 She said also that they all turned their back.
12 How in the world can a prosecutor interested in justice --
13 that's what they're supposed to have here. This is the
14 Justice Department of the United States of America, and she
15 accuses all three of these officers of turning their back.
16 My client never turned his back. Neither did the other
17 guys, when you think about it.

18 When you think about it -- and we're going to get
19 there pretty quick. I'm trying to be short, trying to get
20 you out of here at a good time. But when you think about
21 it, none of these officers turned their back.

22 When you think about it, George Floyd was on his
23 own here. Killing somebody -- did he have a bad night? Who
24 knows? Who knows? But this is not the kind of case where
25 three, four men go out and shoot somebody, rob somebody,

1 where it's obvious that there's a criminal intent, a bad
2 purpose.

3 And the other lawyers have gone over that, but
4 when you look at the instructions, by golly, the
5 instructions -- I don't need them, Thomas Lane doesn't need
6 them, because he was never deliberately indifferent.
7 There's no way he was.

8 But you have to -- I've got a few of them here.
9 It's a problem when you get a piece of paper and you start
10 putting tabs on it. You got more tabs than the paper. So
11 I'm finding it here.

12 Bad purpose and improper motive. Bad purpose,
13 improper motive. Did you see in the evidence of any bad
14 purpose or improper motive of this guy, Thomas Lane? Think
15 back for the last three weeks. Any -- one scintilla of
16 evidence of that? Everything he did -- yes, sir. Should we
17 roll him on his side? Should I go with you in the
18 ambulance? Want me to do the chest compressions?

19 Another -- the government relies -- it's
20 unbelievable to me, I've been around a while, but it's
21 unbelievable that the government stands up here and relies
22 on the spectators, relies on them without them knowing
23 anything about what they see then and yelling at these cops.
24 The old man, elderly man who was there in the beginning,
25 told George Floyd to go into the car.

1 Getting back to the character of my client, he
2 got the community service award when he graduated, voted by
3 his other students, voted by the police that he was there
4 with. The mayor of Minneapolis, the police Chief Arradondo
5 shook his hand.

6 Five months later, within hours, he terminated my
7 client. No investigation, nothing like this, where you
8 would see exactly what happened. He terminated him, a man
9 who worked for years trying to become a cop. Talk about
10 being ruled by the mob, politics. It's very dangerous now
11 to be a cop, very dangerous.

12 I'm going to check my notes here. Oh, there's one
13 other thing that I -- unless I think of something else.
14 Mr. Paule talked to you about the presumption of innocence
15 and proof beyond a reasonable doubt and also about a jury
16 trial.

17 But what I always wondered and what I thought
18 about over the years is: Why in the world would you have a
19 presumption of innocence? Every day out of your life you're
20 going to read the newspaper and you say, oh, they arrested
21 Mr. Jones, they got the man finally.

22 All through your life when somebody is arrested,
23 you presume that they did the right thing, the government,
24 the prosecutors, the cops. Then all of a sudden you are put
25 in this jury room and you're told you can't do that. You

1 have to presume that they made a mistake, that the
2 government made a mistake, our government. They make a lot
3 of mistakes, as we learn through life, but the government
4 made a mistake. You have to presume that.

5 And why -- and you cannot -- as the judge will
6 tell you, that presumption is so strong that it can get you
7 acquitted, that alone. And that presumption stays with you
8 until and if the government proves each and every element in
9 the case beyond a reasonable doubt, the type of proof that
10 you would unhesitatingly act in the most important affairs
11 of your life.

12 And don't doubt it for a second, ladies and
13 gentlemen, this is the most important affair of my client's
14 life, and it should be for you. It's the type of proof
15 where ten years from now, when you are looking in the mirror
16 and you think back on this, I did the right thing, I found
17 him not guilty.

18 And that's your job. Your job is to judge the
19 facts and apply the law and the Constitution. You are the
20 enforcers of the Constitution. You're the unbiased, fair
21 jury that looks at this case and decides it, and there could
22 only be one decision in this case.

23 And then you ask, well, why do we have that?
24 Well, when you look over on that side of the room, you will
25 note four to ten prosecutors, who knows how many FBI agents.

1 Every person they need to do one thing. You know what that
2 is? To convict my client and convict the others. That's
3 their goal.

4 Ladies and gentlemen, don't ever think that this
5 is not an adversary proceeding. This is the government, the
6 United States of America, against my client, Thomas Lane.
7 And our forefathers, in law and authority, said, well, if
8 that's the case, if the government does that, we're going to
9 give the defendant the presumption of innocence and require
10 our government to prove the case beyond a reasonable doubt.

11 And why do they do it? Because of the power, the
12 unending spending money, spending money of taxpayers. Just
13 think of this case. And that's why we have those
14 constitutional rights.

15 One thing about -- a lot of this case went into
16 training. And as I told you in my opening statement, we
17 like that. Yeah, the training, sure. Because you know
18 what? And I'm not going to try and repeat myself, but
19 Thomas Lane followed training right to the T.

20 And their argument -- and I'm going to sit down in
21 a couple minutes, I promise, but their argument that,
22 well -- and I think this is their argument on this timeline,
23 that they found the pulse -- that Kueng found a pulse and --
24 where is it here? Kueng can't find a wrist pulse at
25 8:26:08.

1 So right then, because Kueng took a wrist pulse,
2 my client should have run up. How does he get Chauvin off?
3 "Mr. Chauvin, would you please get off?" That ain't going
4 to happen because these protesters are yelling at him. So
5 what would a reasonable person do? You can't do any more
6 than ask him to get off.

7 And that's what the policy says. I brought it up
8 a couple times. You've got to stay -- you've got to be in a
9 safe area and you've got to do what a reasonable person
10 would do.

11 And a reasonable person, in this case Tom Lane,
12 would request of him -- they know the ambulance is coming --
13 check the pulse, when he couldn't get one. And it's not the
14 carotid pulse because Chauvin's on that. And as soon as the
15 paramedics arrive, my client went to work, told them about
16 it, helped them, went in the ambulance.

17 There is no, no, no medical indifference --
18 deliberate indifference of his medical needs all through
19 this. I don't need to talk about willfulness or specific
20 intent, because the first element, deliberate indifference
21 of his medical needs, was never proven.

22 I thank you, ladies and gentlemen. It's been a
23 pleasure sitting with you for the last month. I bet some
24 days you wonder why you volunteered for this, but thank you
25 very much.

1 THE COURT: Thank you, Mr. Gray.

2 MR. GRAY: Thank you, Your Honor.

3 THE COURT: Members of the jury, we're going to
4 take another recess at this time. Again, please keep an
5 open mind and don't discuss the case during the recess.

6 We are in recess for an afternoon break.

7 (3:24 p.m.)

8 **IN OPEN COURT**

9 **(JURY NOT PRESENT)**

10 THE COURT: Mr. Gray, I understand you'd requested
11 that I stay on.

12 MR. GRAY: I don't think I took over my time,
13 30 minutes or 40. How many? And I know the other two
14 lawyers, I don't think they did either. But the government
15 took over two hours, as I recall it, and because of
16 that and they said they were going to do an hour and a half
17 yesterday, I believe, because of that, I request the court
18 to order the government to limit their rebuttal to 10
19 minutes or 15 --

20 MS. BELL: Your Honor --

21 MR. GRAY: -- because they already took a half
22 hour more than --

23 MS. BELL: -- we actually did not. We took an
24 hour and 45 minutes. We had predicted an hour and a half
25 for initial closing, and the closing was extended in part

1 because of a number of objections by defense counsel. I
2 plan to be as brief as possible. I will --

3 THE COURT: Brief as possible I think should be
4 15 minutes.

5 MS. BELL: I will endeavor to be done in
6 15 minutes, and I apologize to Renee in advance.

7 THE COURT: Okay. Counsel, I have another factor
8 that's involved. It's my understanding that our chief judge
9 has ordered the closure of the courthouses at 3 o'clock this
10 afternoon, and we are obviously past that.

11 First and foremost, as an elderly participant, I
12 don't necessarily listen to the chief because I used to be
13 one and I know that you don't necessarily have to pay
14 attention to him.

15 But I am concerned about safety of people,
16 obviously, and so I'm going to suggest that we take this
17 break. We will have the government give their rebuttal, and
18 at the conclusion of that we then do recess for the day and
19 I will charge the jury first thing tomorrow morning. And
20 hopefully everybody will be able to get home safe and sound.

21 With that, let's take a short recess and we'll
22 come back in.

23 MR. PLUNKETT: Ten minutes, Your Honor?

24 THE COURT: Yeah, or something like that.

25 (Recess taken at 3:26 p.m.)

* * * * *

(3:37 p.m.)

IN OPEN COURT

(JURY PRESENT)

THE COURT: Ms. Bell, proceed.

MS. BELL: Thank you, Your Honor.

All right, ladies and gentlemen. You get to hear from one last lawyer one last time, and it's me. I am going to talk to you about some things that I think don't matter.

MR. PLUNKETT: Objection. Improper assertion of the government's "I."

MS. BELL: Your job in the jury room is to decide what facts matter and what facts don't matter. I submit to you that there are facts in this case that you've heard about that actually don't matter to the ultimate question, but were relevant for information. I'll give you an example.

We heard that May 25th, 2020, was Memorial Day. It doesn't matter to someone's constitutional rights if it's Memorial Day or Labor Day or Christmas. It's a fact, but it doesn't determine your decision. Okay.

And so there are other facts, other pieces of information that I submit to you when you think about the evidence in the case don't actually matter to the question of constitutional rights and what happened.

1 The neighborhood doesn't matter. Your
2 constitutional rights don't change if you get stopped
3 driving through X neighborhood or Y neighborhood. Your
4 rights are the same. The defense would have you believe
5 that somehow your constitutional rights change depending on
6 what neighborhood you are in.

7 MR. PLUNKETT: Objection. Disparaging.

8 MR. GRAY: Objection, Your Honor. There was never
9 any argument about that.

10 THE COURT: I don't know if that's true or not,
11 but, anyway, it's rebuttal.

12 Continue.

13 MS. BELL: Look at the video. These are folks out
14 walking. There's families walking by, people with kids on
15 the street. People go into the store. It does not matter
16 what neighborhood it was to the constitutional rights that
17 apply or to the actions of these officers.

18 It also doesn't matter that Mr. Thao never touched
19 Mr. Floyd, because this is a crime of failing to do
20 something.

21 It also doesn't matter that Officer Thao had some
22 experience with people saying, "I can't breathe" in the past
23 and maybe they could breathe because, as Officer Thao
24 admitted on cross-examination, as the defense expert said,
25 you have to take that seriously. You have to. Someone's

1 life might depend on it.

2 And it also doesn't matter what happened before
3 Mr. Floyd was pinned on the ground. There's been argument
4 that Officer Thao wasn't there, the bystanders weren't
5 there, except for Charles McMillian who, in fact, tried to
6 help the police; and then when the police were not doing
7 what they are constitutionally obligated to do, he told
8 them, someone who had been there.

9 But here's why they didn't have to be there the
10 whole time, because you know that force used has to be
11 appropriate and proportional at the time. Someone who was
12 violent earlier, if they stopped struggling, if they stop
13 resisting, if they go unconscious, you cannot continue to
14 use force. Period.

15 And I want to be clear. The government is not
16 arguing that the officers shouldn't have investigated the
17 forgery or shouldn't have tried to detain Mr. Floyd to
18 figure out what was going on. No one is saying they
19 shouldn't have put him in the squad car. No one is saying
20 that Mr. Floyd wasn't refusing the officers' orders to get
21 in the squad car.

22 What we are saying is that once he's on the ground
23 and has stopped resisting, Officer Chauvin's force was
24 unreasonable. As the defense expert said, obvious beyond
25 question it was unreasonable. And once that force was

1 unreasonable, which defense expert said was while Mr. Floyd
2 was still conscious, Officer Thao and Officer Kueng had a
3 duty to stop it.

4 The pills in the car also don't matter because
5 they weren't in Mr. Floyd's bloodstream. They're
6 information, but the doctors told you --

7 MR. GRAY: Objection. Misstatement of the
8 evidence that they weren't in the bloodstream.

9 MS. BELL: Your Honor --

10 THE COURT: That's overruled.

11 MS. BELL: Pills found in the car cannot be in
12 your body. The same with the six-pack on the seat that you
13 drive back from the liquor store is not in your belly unless
14 you drunk it. It's either got to be in the car or in you.
15 That's it. It can only be one place or the other.

16 The carotid pulse. Oh, we've heard a lot about
17 the carotid pulse and it's the gold standard. Sure. If you
18 can't find a pulse, the answer cannot be "I did nothing."
19 The answer cannot be, "Oh, well, I couldn't."

20 Mr. Lane [sic] just said Lane couldn't check the
21 carotid. Not true. Mr. Lane could get up from where he was
22 and walk over and check the carotid pulse. But if he
23 couldn't get there, if he somehow thought he was going to be
24 prevented from doing that, if he didn't think there was a
25 pulse, he has to start CPR. Period. That's the

1 expectation. That's the reasonable measure that we have.

2 It is not reasonable not to do anything and excuse
3 it by saying, "Well, I was down by the legs. I couldn't
4 reach a carotid pulse. I was in the middle. I couldn't
5 reach a carotid pulse. So I just didn't do anything." That
6 is not a reasonable measure.

7 I submit to you, ladies and gentlemen, that the
8 CPR in the ambulance ultimately also did not matter. As my
9 grandpa used to say, a day late and a dollar short.

10 The CPR in the ambulance was done almost seven
11 minutes after Lane asks the first time, "Should we roll him
12 on his side," a time that Mr. Lane felt perfectly safe to
13 roll Mr. Floyd onto his side, a time the defense expert
14 agrees Mr. Floyd should have been placed on his side. That
15 simple move would have saved Mr. Floyd's life, according to
16 Dr. Systrom's testimony. Seven minutes is too late.

17 And so is six minutes, which is how much time it
18 took from when Mr. Lane noticed that Mr. Floyd was going
19 unconscious to when CPR was started in the ambulance. And
20 so is five minutes, which is the second time that Officer
21 Lane asked to roll him on his side.

22 Excuses like, "Well, Derek Smith didn't seem to be
23 rushing" don't excuse the things you didn't do up until that
24 point. You have a duty to provide medical aid.

25 MR. GRAY: Judge, I object to this as don't

1 excuse. Circumstantial evidence. They can look at
2 Mr. Smith's conduct and circumstantial evidence with regard
3 to my client.

4 MR. ROBERT PAULE: And, Your Honor, I'd object as
5 disparaging in general, which is improper.

6 THE COURT: Okay. It's rebuttal, final.
7 Continue.

8 MS. BELL: And so, ladies and gentlemen, things
9 that didn't -- that happened later don't excuse the earlier
10 failures. They just don't.

11 And we heard a lot about excited delirium in this
12 case. Excited delirium, another thing largely irrelevant.
13 George Floyd wasn't suffering from excited delirium. Every
14 single medical expert who got up here, who knew anything
15 about it, said, "Nope, I don't think he was suffering from
16 that." So it has nothing to do with his cause of death.

17 MR. ROBERT PAULE: I'd object as misstating the
18 evidence, Your Honor.

19 THE COURT: That I sustain.

20 MS. BELL: Your Honor, Dr. Langenfeld --

21 THE COURT: That I sustained.

22 MS. BELL: I'll identify the folks.

23 Dr. Langenfeld, Dr. Baker, Dr. Bebart, who is actually an
24 expert in excited delirium, all said nope.

25 MR. ROBERT PAULE: Your Honor, I would object to

1 that. She's summarizing the evidence inaccurately.

2 THE COURT: I sustain, counsel.

3 MR. GRAY: Move it be stricken.

4 THE COURT: Stricken.

5 MS. BELL: Even if you believe officers thought
6 Mr. Floyd was suffering from excited delirium, that doesn't
7 change either the force they could use or the medical aid
8 they needed to render. There is no question you cannot
9 continue to use force on an unresisting person. Period.

10 MR. ROBERT PAULE: I'd object to that statement
11 because the testimony is it depends on the facts
12 and circumstances.

13 THE COURT: That's overruled. It's argument.

14 MS. BELL: The defense expert, Mr. Ijames, said
15 that while Mr. Floyd was still conscious, the force became
16 unreasonable. It doesn't matter if Mr. Floyd was suffering
17 from a drug overdose, excited delirium or some other medical
18 condition; the force was not appropriate. And the medical
19 care is actually the same. Roll them on their side, whether
20 it's an overdose, excited delirium or another medical
21 condition.

22 The defendants have argued that they somehow
23 thought they could ignore all the other training they had
24 about a person's ABCs, airway, breathing, and circulation.
25 By the way, the "C" stands for circulation, not carotid.

1 MR. GRAY: Judge, Defendant Lane did not argue
2 that. She should separate the defendants.

3 MR. PLUNKETT: It's also disparaging.

4 THE COURT: The jury will recall the evidence.
5 Continue.

6 MS. BELL: The training required them to roll
7 Mr. Floyd on his side. If he was experiencing excited
8 delirium and was handcuffed and under control, if he was
9 unconscious, if he was having breathing problems, roll him
10 on his side.

11 And there's been talk about the role and
12 sedation -- of sedation and excited delirium. Mr. Floyd did
13 not need to be sedated. He was unconscious. He was not
14 resisting. He was, according to Mr. Ijames, safe to roll on
15 his side.

16 I'm going to talk about willfulness a little bit.
17 Willfulness is an element in both Count 1 and Count 2.
18 Willfulness requires that you act with a bad purpose or
19 improper motive to disobey or disregard the law.

20 To prove willfulness the government has to show
21 that the defendants knew what they were doing was wrong and
22 they did it anyway. If you have kids, you probably
23 understand what willfulness means. It's not complicated.
24 They knew it was wrong.

25 MR. ROBERT PAULE: Your Honor, I'd object to that

1 as misstating the law.

2 THE COURT: Overruled.

3 MS. BELL: They knew what they were doing was
4 wrong and they did it anyway.

5 Each defendant took the stand and told you they
6 knew they had a duty to intervene and they knew they had a
7 duty to render medical aid. They knew from their training
8 about those duties. They knew from their training that an
9 officer hitting or punching a handcuffed person was not
10 appropriate because that is obvious that that's wrong.

11 Well, ladies and gentlemen, the defense expert,
12 Mr. Ijames, said that Officer Chauvin's force was
13 unreasonable, it was obvious beyond question. They knew
14 they had to intervene. The force was obvious beyond
15 question, and they had opportunities and means to do so, and
16 they didn't. That knowing what you're supposed to do,
17 knowing what the law requires and disregarding that is
18 willfulness.

19 You don't have to have a nefarious purpose, you
20 don't have to intend the person is going to die, but you
21 have to have a purpose that you know you're supposed to do
22 this thing and you don't.

23 And with respect to the duty to intervene, Officer
24 Thao and Officer Kueng ignored their duty. They made other
25 choices. They disregarded the most basic training concepts.

1 And when we look at the concept of "In your custody and in
2 your care," rendering medical aid, disregarded those
3 concepts and didn't render medical aid.

4 The defendants acted willfully. They knew what
5 their training was, they knew what they were supposed to do,
6 and they didn't do it.

7 Your job during this trial is to decide what you
8 believe. You can decide you believe all or some or none of
9 what a witness says. You get to watch the videos, and you
10 get to -- some of you, maybe your style is you're going to
11 watch the videos and just look at for what Officer Thao,
12 understand his perspective what he was doing.

13 MR. GRAY: Judge, I object to this as improper
14 rebuttal.

15 THE COURT: It's overruled.

16 MS. BELL: You get to decide how you're going to
17 approach that. Maybe you watch them and then you just watch
18 what Officer Kueng did and figure out his perspective, what
19 he could see and hear. But you decide, ladies and
20 gentlemen, what these officers could see and hear and
21 understand.

22 And I submit to you that when you see the video,
23 things like, well, Officers Kueng and Lane couldn't see
24 George Floyd's face, like the doctors testified to, we saw
25 his face, we knew he was unconscious, they didn't need to

1 see his face. Listen to the video. Officer Lane said, "I
2 think he's passing out." The crowd was yelling, "He's going
3 unconscious." You decide what they heard, saw and observed.
4 And as Dr. Systrom said, they had a front row seat to George
5 Floyd.

6 We heard testimony that George Floyd was 6 feet
7 and a few inches tall. Okay. If three officers in 6 feet,
8 it's about 2 feet, 2 feet, 2 feet, if you divided it
9 equally. Use your reason and common sense, ladies and
10 gentlemen. What did these officers see? What could Officer
11 Kueng see, shoulder to shoulder with Derek Chauvin? He
12 could see his knee. I submit to you that when you review
13 the videos -- look at the Milestone. It's actually a great
14 view from behind. You can see the officers lined up.
15 That's the one that's the city camera. You can see the
16 officers lined up. You can see how close they are. You can
17 see using your common sense exactly what they could see.

18 We've also heard about some talk about scene
19 safety and sort of in two places. One, the scene itself was
20 unsafe and then, number two, maybe George Floyd might spring
21 to life and pose a safety risk. On that point, George Floyd
22 was searched, handcuffed, on the ground with not one, not
23 two, but three officers holding him down, and he had another
24 one standing on the side. He stopped speaking. He went
25 unconscious. He was no threat at all.

1 As to scene safety, no one called for backup.

2 MR. GRAY: Object. She's now -- that's improper
3 rebuttal. She's arguing her case again.

4 THE COURT: I think you are, counsel. I sustain
5 that.

6 MS. BELL: I'm arguing scene safety, which was
7 raised by all three defense counsel, actually.

8 MR. GRAY: Going over the same facts.

9 THE COURT: Yeah, I --

10 MS. BELL: Your Honor.

11 THE COURT: I think we are, counsel, and I
12 guess -- and I'm concerned on the time issue, as you all
13 know, so let's just move on.

14 MS. BELL: All right. I'm --

15 Every jury gets to decide how they deliberate, how
16 many times you look at evidence, what evidence you want to
17 look at once or twice or five times. It's entirely up to
18 you. Maybe you need extra speakers or extra copies of
19 certain exhibits. How you deliberate is up to you. I would
20 submit to you that the videos are important to watch.

21 MR. GRAY: Object to that as repetitious. She's
22 talked about the videos for the last ten minutes, Your
23 Honor.

24 THE COURT: I'll overrule. She can answer.

25 MR. PLUNKETT: That's also invading the province,

1 Your Honor.

2 THE COURT: Again, it's overruled.

3 MS. BELL: The videos are sometimes hard to watch,
4 I agree, but you have to watch them because they're the
5 evidence in this case, as difficult as they might be.

6 So we've heard over and over that in your custody
7 is in your care or, even more simply, if someone's in your
8 custody, they're your baby. And although Mr. Floyd was a
9 grown man, as he lay on the ground and handcuffed, pressed
10 into the ground by these three men, he was in fact helpless
11 as a baby to protect himself.

12 We know from the videos, from the testimony and
13 from the common sense that all of these three defendants in
14 this case, Officers Thao, Kueng and Lane, knew that George
15 Floyd's life was at risk. They absolutely knew that they
16 had the ability, the authority and the legal obligation to
17 intervene. That's with respect to Thao.

18 MR. GRAY: Object to that, Your Honor. My client
19 is not charged with intervening.

20 MS. BELL: I just made that clarification,
21 Mr. Gray.

22 MR. GRAY: I didn't hear it.

23 MS. BELL: They all absolutely knew that they had
24 the ability, the authority and the legal obligation to
25 attend to Mr. Floyd's serious medical condition, as he lay

1 there unconscious, not responsive and otherwise helpless,
2 and they weighed their risks.

3 Police officers have incredibly difficult jobs.
4 They often see people on their worst day. And they have
5 power to help people, to protect victims, to investigate
6 crime, to take away the freedom of someone who commits a
7 crime, but with that power comes responsibility. Because of
8 that power, our Constitution requires that law enforcement
9 officers do what they can to stop unlawful harming of
10 someone in their custody and in their care, even if it's
11 done by another law enforcement officer. They have the
12 ability and the authority and the obligation to stop it.

13 There are no free passes to the Constitution
14 because the risk as demonstrated in this case is too great.

15 MR. GRAY: Judge, I object to this. Improper
16 rebuttal. I never argued there was a free pass. Totally
17 improper.

18 THE COURT: No. It's summation.

19 Continue.

20 MS. BELL: There is no pass for "I was a brand-new
21 officer." There is no pass for "It would have been hard or
22 uncomfortable to speak up." There is no pass for "I was
23 afraid I'd get in trouble." No pass even for "I thought I
24 might lose my job."

25 Our Constitution weighed the risks and the

1 Constitution says you must act, you must take reasonable
2 steps to stop the force, you must take reasonable steps to
3 provide medical care. These defendants weighed those risks
4 and chose not to act.

5 MR. ROBERT PAULE: I'd object to that as burden
6 shifting, Your Honor.

7 THE COURT: It's summation. The burden does not
8 shift.

9 MS. BELL: They chose not to take reasonable steps
10 under the law. That is willfulness, knowing that what
11 you're doing is wrong in violation of the law and doing it
12 anyway.

13 MR. GRAY: I'd object. She said that three times
14 now.

15 MS. BELL: That is the argument.

16 THE COURT: That is argument.

17 MS. BELL: All right. Sum up here. To paraphrase
18 a quote, evil happens when good men do nothing. This
19 happened in part because these three defendants did nothing.

20 MR. GRAY: Object to that.

21 MR. ROBERT PAULE: I'd object.

22 THE COURT: To that I sustain.

23 MR. ROBERT PAULE: I'd ask that that be -- the
24 jury be instructed to disregard that argument, which is
25 improper.

1 MS. BELL: This happened --

2 THE COURT: Well, we're going to complete the
3 argument.

4 Continue, counsel.

5 MS. BELL: Thank you.

6 This happened because these defendants did not
7 intervene, Thao and Kueng, and all three defendants did not
8 render medical aid. They didn't have to intend to harm
9 Mr. Floyd. They just had to know that they needed to take
10 certain actions under the law and they failed to do so.

11 They weighed what they knew they were supposed to
12 do, according to the law, against perhaps a difficult thing.
13 They didn't do the right but difficult thing. This is now
14 going to turn to your hands, where you are going to have to
15 do the right but perhaps difficult thing.

16 Last, I want to say it wouldn't be surprising if
17 you felt sympathy for one of the defendants. But as the
18 judge will tell you, you cannot let sympathy influence you.
19 You can feel bad someone was a rookie or you can wish that
20 they made different choices, but it would not be okay. It
21 would be a violation of your sworn duty as jurors to put
22 your sympathy above the legal obligations of the law.

23 These defendants violated their obligations to
24 act. The facts and the law establish that. You have an
25 obligation to render a verdict based solely on the facts and

1 the law without passion or prejudice, without sympathy, even
2 if it's hard, because that's what the Constitution requires.

3 This was both a tragedy and a crime, and in this
4 case the only verdict that is supported by the facts and the
5 law is guilty on all counts for all defendants.

6 THE COURT: Members of the jury, the lawyers know
7 this, but you didn't. Our chief judge has ordered a snow
8 emergency and that the courthouses be closed. Frankly, it
9 was ordered an hour ago at 3:00, but now it's 4:00.
10 Nevertheless, we're going to wait till tomorrow morning to
11 give the instructions of the court as to the law that's
12 applicable to the case.

13 And, frankly, that's being done -- not that we
14 couldn't do it today, we could, but it's being done for the
15 safety of everybody involved in this matter. We have a
16 bunch of snow out there. I haven't got any idea how much,
17 but there has been a bunch of snow that's fallen today.

18 And so I don't know anything about the road
19 conditions or anything else, but other people apparently do
20 because they are suggesting that the courthouses be closed,
21 and so I think that's what we need to do.

22 Now, members of the jury, you've heard all the
23 evidence you are going to hear in the case. You've heard
24 the summations of the lawyers with respect to the case. You
25 still have not heard the instructions as to the law that's

1 applicable to the case.

2 So continue to keep an open mind with respect to
3 the matter. And, with that, as you go into this evening,
4 don't discuss the case among yourselves or others. Don't
5 carry out any personal investigations. Don't read any media
6 accounts or visit any internet factors and that kind of
7 thing with respect to the case.

8 And, with all of that, we wish you a good evening.
9 We will see you tomorrow morning.

10 Now, I'm going to change the time to start
11 tomorrow morning. We're going to start at 9 o'clock. We'll
12 start at 9:00 tomorrow. You will hear the court's
13 instructions of the law, at the conclusion of which you will
14 commence your deliberations with respect to the case.

15 With that, the jury is excused.

16 (4:03 p.m.)

17 **IN OPEN COURT**

18 **(JURY NOT PRESENT)**

19 THE COURT: Counsel, I stayed on for a minute. I
20 don't think we want to do this tonight, but we need to find
21 a time tomorrow to both inventory and make sure that we have
22 appropriate exhibits ready to go to the jury.

23 I have, I think, maybe one or two differences that
24 Renee and I might have with respect to the records that I've
25 kept.

1 But I have to tell you, Mr. Paule, that I've got
2 difficulty with your exhibit list and what's submitted and
3 what's not. That, to me, is the biggest challenge.

4 Mr. Plunkett, Mr. Gray, I don't have any problems
5 there.

6 MR. GRAY: I've only got two.

7 THE COURT: I can count to two, that's why.

8 Okay. Let's figure out when we're going to do it.
9 We don't want to wait too long after they start
10 deliberations to get it to them. So if it gets done
11 earlier, great; if it doesn't, why, that's when we'll do it.

12 Okay. See you tomorrow.

13 MR. GRAY: Thank you, judge.

14 THE COURT: Hopefully -- I have no idea if we've
15 got bad roads or not out there. Neither do you. You
16 haven't even see the daylight.

17 See you tomorrow.

18 (Court adjourned at 4:04 p.m., 02-22-2022.)

19 * * *

20 I, Renee A. Rogge, certify that the foregoing is a
21 correct transcript from the record of proceedings in the
22 above-entitled matter.

23 Certified by: /s/Renee A. Rogge
24 Renee A. Rogge, RMR-CRR

25